



Courtesy The Berkman Center
Prof. Arthur Miller '58 engages Anne Anderson, Mary Toomey, and Dan Kennedy last weekend in Ames Courtroom.

"A Civil Action" Veterans Mull Lessons of Woburn

By Ben Lehrer

Truth squared off against fiction last weekend at The Law School as the original cast of characters from "A Civil Action" gathered to reflect on the events that surrounded *Anne Anderson, et al. v. W.R. Grace, et al.*, the famous lawsuit that spawned the bestselling book and popular film.

One of the truths emerging from the conference was a bombshell juror revelation that the case's structure and presentation made it impossible for her to adequately deal with the issues.

The conference, "Lesson From Woburn," was sponsored by the Berkman Center for Internet & Society. Prof. Charles Nesson '63, Director of the Berkman Center, was one of the plaintiffs' lawyers in the case.

In addition to lawyers from the plaintiffs' and defense's sides, the conference featured talks by three of the original plaintiffs,

including Anne Anderson; Harriet Clark, one of the jurors; Dan Kennedy, the reporter who covered the saga for the local Woburn paper; and Jonathan Harr, who wrote the book "A Civil Action."

The conference featured individual presentations on Saturday morning, and two panel discussions in the afternoon. The first panel featured the original cast of characters, while the second panel consisted of professors from a number of schools who discussed how the Woburn tragedy lives on in the classroom.

Judge Skinner Speaks

The Berkman Center kicked off the event Friday night with a documentary film on the case prepared by two professors from the Films for Justice Institute at the Seattle University of Law in Washington, who co-sponsored the conference.

The film was the first in an

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Dean Enthusiastic About LSC Academic Reform Proposal

Justin Herdman

Recent proposals for academic reform by the Law School Council have met with preliminary approval by Dean Clark '72. Adoption of the plan by the faculty, however, remains speculative at this point.

In December, the LSC approved a series of recommended changes in the Law School's academic policy. The plan, entitled "Community 2000", would have a dramatic impact on the first year curriculum.

The LSC initiative calls for the hiring of teaching fellows for all first-year, large-section courses. In addition, the plan calls for

mid-semester reviews of teaching performance, similar to the Board of Student Advisors surveys that rate every professor.

Professors would also be required to administer optional, non-graded mid-term examinations to first-year students. The initiative would also make written feedback on all final examinations mandatory, whether on an individual or course-wide basis.

Committee Mania Hits HLS

On Monday, a group of repre-

sentatives from the LSC met with Dean Clark to discuss the proposals. Both sides were pleased with the other's commitment to the idea of reform.

"[Clark] was definitely receptive," said LSC President Dan Fridman '99.

Clark expressed his approval of the plan in terms of his broader educational objectives.

"I had a favorable reaction to the spirit of the proposals. It fits into my model of learning, which is that people have to be active," Clark said.

As a result of the conversation, Dean Clark has begun to form a committee of faculty members to review the LSC's plan and possibly amend the proposal to insure a positive reception by HLS professors. "When I create a committee, I give a lot of credence to their input," said Clark.

Having impressed the Dean with their resolve, LSC now faces the imposing task of swaying conservative faculty members. Manoj Mate '00, who serves as Chairman of the LSC's Academic Affairs Committee, summarized the council's concerns. "We do have our worries. For instance, professors will have to restruc-

of Native legal systems."

According to Navajo Nation Supreme Court Justice Robert Yazzie, the visit is part of a broad effort by the Court to educate the public about Native American legal systems. "Shortly after I became Chief Justice of the Navajo Nation in 1992, the justices of the Navajo Nation Supreme Court adopted a policy that the Court should sit at universities and during Indian law confer-

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Students Work to Keep State Out of Death Business

By Francesco Barbera

As election day approached last fall, then-acting Governor Paul Cellucci criss-crossed the Commonwealth of Massachusetts, reiterating to voters his pledge to reinstate the death penalty. "I don't want Massachusetts to go another year without this critical law on the books," he declared to supporters in September.

Now, as the newly-elected Governor prepares to introduce another death penalty bill in the State legislature, a group of students at the Law School are gearing up for the battle to keep Massachusetts one of only twelve death-penalty free states in the country.

"The Law School campus is not sensitized to the fact that this is an extremely timely and urgent issue in Massachusetts," said Andrew Ehrlich '00, a member of the Law School's Death Penalty Project who is organizing the effort to mobilize students.

Just over a year ago, a bill to reinstate capital punishment was introduced in the State legislature, but failed in the House

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Sen. Feingold '79 Impeachment Trial Vote a "Profile in Courage"

Wisconsin Dem. Stirs Controversy By Crossing Party Line

By Suzanne Carter

President Clinton's impeachment trial is proceeding according to the plan of the Senate's Republican majority, with three witnesses — Monica Lewinsky, Vernon Jordan, and presidential aide Sidney Blumenthal — having been deposed earlier this week.

One Democratic Senator and HLS alumnus, Russ Feingold '79 of Wisconsin, made headlines last week for breaking ranks with his colleagues to vote with the majority.



Sen. Russ Feingold '79

"My view, as of this moment, is that to dismiss this case would in appearance and in fact improperly 'short circuit' this trial," Feingold wrote in a statement released after the vote. "I simply cannot say that the House Managers cannot prevail regardless of what witnesses might plausibly testify and regardless of what persuasive arguments might be offered either by the Managers or by Senators who support conviction."

Stressing that his vote did not indicate that he would necessarily vote to convict Clinton, which

he regards as a "close case," Feingold indicated that he thought the obstruction of justice charge against the President was more likely to rise to the level of high crimes and misdemeanors than the perjury charge.

Regarding witnesses, Feingold noted that "[b]ecause I have decided that the House Managers probably must be held to the highest standard of proof — beyond a reasonable doubt — I believe they should have every reasonable opportunity to meet that standard and prove their case."

"Furthermore, witnesses have been called every time in our history that the Senate has held an impeachment trial," Feingold said.

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Flashback

9 Years Ago

in the

RECORD



Harvard Law Record

Volume 90, No. 1

America's Oldest Law School Newspaper

February 9, 1990

Obama Election Lauded Coast To Coast

New Editor 'Honored', But Says Fight For Equality Must Go On

By Paul Tarr
and John Thornton

The election of Barack Obama to editor of the Harvard Law Review is being praised all over the country, but Obama and other students warn it should not overshadow the obstacles still facing minorities in modern-day America.

Obama, 2L, becomes the first black President of the 104-year-old journal after being selected by his colleagues during a marathon debate that began early Sunday and lasted until Monday morning. He beat out 18 other candidates for the chance to lead what is widely considered the most prestigious law journal in the country.

"My election is a positive

sign in that it shows people are ready to put in leadership positions black folks who have strong concerns about black issues," Obama said in an interview.

"On the other hand, I am trying hard to keep it in perspective," he added. "What happens at Harvard really gets magnified ... but there is so much more left to do in terms of hiring more minority faculty, in terms of dealing with the disaffection blacks feel in the university, and the need for more diverse career opportunities."

"It's important that stories like mine aren't used to say that everything is O.K. for blacks. You have to remember that for every one of me there are hundreds or thousands of black students with at least equal talent who don't get a

chance."

"This means so much for us," said Cassandra Butts, 2L and an officer of the Harvard Black Law Students Association. "But at the same time we have a whole lot of work to do. We still have a law school that is overly oriented toward the corporate world while most poor people, many of

(continued on back page)



Photo by Joe Winn

Barack Obama, 2L, elected president of Law Review.

First Black Joined Review In 1920

Charles Houston, the first African-American on the Harvard Law Review, was elected in 1920.

Houston, a native of Washington, D.C. and the son of a lawyer and hairdresser, was accepted to HLS after gradu-

ating Phi Beta Kappa from Amherst College.

He went on to become Dean of Howard University Law School, where he is credited with training an entire generation of civil rights lawyers that began a serious of law-

suits that culminated in the *Brown v. Board of Education* decision.

According to the book *Eyes On The Prize*, Houston "thought that the only worthy role for a lawyer was that of social engineer -- someone

who understood the Constitution and knew how to use it to better the living conditions of underprivileged citizens."

In 1935 Houston was quoted as saying, "A lawyer is either a social engineer, or he's a parasite on society."

Houston later went on to be chief legal counsel for the NAACP. Among his students was Justice Thurgood Marshall, who succeeded Houston at the NAACP and who argued the *Brown* case before the Supreme Court.

In an interview nearly 25 years after the *Brown* decision, Justice Marshall described the impact of Houston on school desegregation.

"A large number of people never heard of Charles Houston ... [but] when *Brown* was being argued in the Supreme Court ... there were some two dozen lawyers on the side of Negroes fighting for their schools ... Of those lawyers, only two hadn't been touched by Charlie Houston ... That man was the engineer of all of it."

(continued from page 1) whom are black, cannot get legal services."

News of the election evoked many emotional responses from faculty, alumni, and students.

"This is a momentous event," said Tynia Richard, the president of the Harvard Black Law Students Association. "I have received calls from alumni all over the country. Everybody is excited."

Prof. Derrick Bell, who in 1969 became the first black appointed to the faculty, said a member of the *Review* called him at home at 12:50 a.m. Monday, minutes after Obama's election.

"I'm very pleased," he said. "I guess I tend to be one who stays in a state of constant pessimistic despair about the chances of America ever doing the right thing as far as race is concerned."

"Well, I grasp these little indications as a sign that maybe it might work after all."

Dean Robert Clark called the election a "wonderful" development. "It was bound to happen, and I'm glad it happened now," he said.

William Coleman, '46, the third black in history to make *Law Review*, said he was "touched" when he opened the *New York Times* on Tuesday and read an article about the election. "This was a long time coming," said Coleman, who served as Secretary of Transportation during the Nixon administration and is now a partner in the Washington, D.C. office of O'Melveny and Myers.

"I am elated," said Paolo Di Rosa, who was in Obama's section three class last year. "It is not something extraordinary that a black should be president of the law review, and it shouldn't be. And from now on, it won't be."

Prof. Chris Edley termed the election a "milestone." He echoed a general consensus that the election's only downside is that its racial dimension should be seen as so significant in the 1990's.

Warrington Parker, '89, a black who served on law review and currently a clerk on the 9th Circuit, said he felt "ecstatic" to learn of Obama's election.

"I wanted it to happen while I was there and it didn't," he said. "I'm just happy it happened now."

Obama gives much of the credit for his election to those people of color who had to scale higher mountains than he to get to Harvard Law School and to participate in the *Review*. HLS did not accept more than a handful of minority applicants until the early 1970s, and no black had served on the *Review* for the 30 years preceding Prof. Chris Edley's appointment in 1976.

Only three blacks were members in its first 85 years: the late civil rights attorney Charles Houston, the late Judge William Hastie, and Coleman.

Just last year Crystal Nix, 3L, was the first black to serve in one of the eight editorial positions known as the masthead.

"I'm walking through doors other folks broke down," said Obama. "A whole bunch of people worked real hard to allow me to be in this position ... folks at BLSA, Prof. Bell, Edley, Ogletree and a lot of others. They are the ground-breakers."

The 28-year-old Obama was born in Hawaii. His late father was a Finance Minister in Kenya and his mother is an anthropologist. He was raised in Indonesia, Los Angeles, and Hawaii.

He graduated from Columbia College in 1983 with a degree in political science. After working for a year in New York as a business journalist, he moved to the south side of Chicago to become executive director of a grass-roots activist organization called Developing Communities Project.

The organization worked with churches, unions, and neighborhood groups on issues ranging from job training to parental control of public schools. Obama spends a good deal of his vacation time in Chicago training community organizers.

Interviews with several *Review* members said it was the combination of Obama's outstanding legal scholarship and experience as a community organizer, in addition to his inclusive leadership style, that distinguished him from the crowded field of candidates.

"I think the biggest thing he brings to the *Review* is maturity," said Frank Amanat, a second-year member of the *Review*. "He's had a lot of exposure to the outside world, yet he is right at home [in academia]."

Prof. Laurence H. Tribe '66, who has guided Obama on research projects, said, "My sense of him as a human being, as a future lawyer, and I hope as a future legal scholar, have been highly impressive."

It was just after midnight on Monday when Obama was called into the Ropes-Gray room to hear the final judgment of his weary but excited colleagues, who began the debate at 8:30 the previous morning.

Obama had spent most of the day cooking in the Ropes-Gray kitchen for those deliberating, a traditional task for those candidates still in the running.

After the early start, the field had been cut to ten by lunchtime. By late afternoon a member of the *Review* had told another five to stop cooking. By midnight another three had been asked to rejoin the larger group.

Then there were two -- Obama and David Goldberg, a 24-year-old graduate of Harvard College.

When Obama walked into the Ropes-Gray room, the eighty members of the *Review* broke into applause. Before words were spoken a black student on the *Review*, Ken Mack, walked over and gave Obama a long embrace.

"It was a hard hug and it lasted for a while," said Obama. "At that point I realized this was not just an individual thing ... but something much bigger."

Monica Harris, a 2L member of the *Review*, said "all the black students are sharing in his victory right now. I think it reflects favorably on the *Review* that it wasn't until he walked into the room that people began to realize he was going to be our first black President."

While the election has received much press attention as the breaking of a racial bar-

rier, race was not a factor considered by those involved in the selection process.

"The election was tremendous because race was not a factor," said Christine Lee, 2L, and a member of the *Review*. "It was not strategized politically."

Obama emphasized that HLS has a long way to go to attract a more diverse faculty and student body, but he attributes his election partly to strides the law school already has made in these areas. He said he enrolled in HLS because there was a core group of professors examining legal issues of concern to minorities.

"The fact there were diverse viewpoints on the faculty was important to me, and the fact there was an active black students organization was important to me. It also helped that there were a lot of students interested in public interest law."

"I believe all this stuff helped pave the way for my being elected because it creates an atmosphere that allows a person of my interests and perspective to be in the mainstream. It means white conservatives can trust me, and it means I can stake out my positions and be myself."

Obama said it is vital that HLS "start thinking more about its relationship to the larger society and about the kind of commitment the school should make to assure kids like me get in these positions again."

"It would be tragic if it took another 104 years."

Obama sees his new position as an opportunity to broaden and sharpen the scholarly orientation of the *Review*, making it more inclusive of minority and "alternative" perspectives. He emphasizes that as President he is only first among equals in deciding what articles get printed.

Obama said he is especially interested in Constitutional law, noting the way in which issues of race relations and resource allocation "are often played out in Constitutional terms." His work as a community organizer has given him an appreciation for business law as well.

"Those interested in public policy have to think about how the private sector can be har-

nessed to promote urban development," he said.

Obama's research for *Tribe* has involved the nature of Constitutional Space, with a focus on implementing post-Newtonian insights in Constitutional doctrine. He has also made significant contributions to the final two chapters to *Tribe's* forthcoming book on the cultural and class dimensions of the abortion debate in America. The book, *Abortion: Clash of Absolutes*, will be published this May by W.W. Norton.

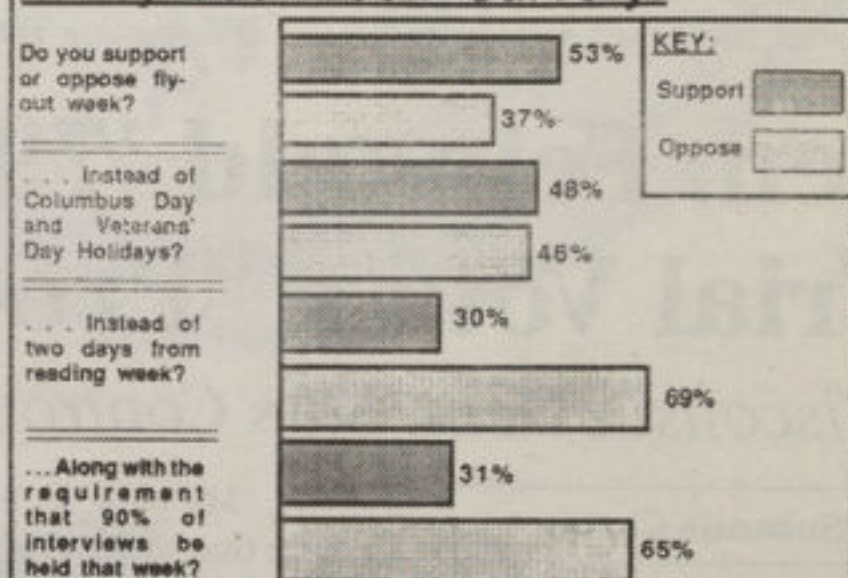
Obama has expressed a career interest in government and

politics. Whether he would consider legal academia is uncertain, but those who know him say his charisma and self-confidence are most at home in the political arena.

"I don't think Barack sees this as a steppingstone to the academic aspects of the law," said Rob Fisher, 2L, a close friend of Obama. "But whatever he does, he is extraordinarily committed to making a contribution to the resolution of social problems in this country."

"There is no possibility this [election] will send him in a different direction."

A Fly-Out Week Survey:



A majority of the student body supports the fly-out week approved by the faculty last week, although students registered strong disapproval of the loss of two reading days and the requirement that all but ten percent of a student's interviews be held during the fly-out week. (See bar graph.)

The survey also showed that almost two-thirds of the respondents did not mind beginning interviews a week earlier and

that one-half of the respondents thought the first week in November was the best week for fly-out week. Nearly 70 percent of the students approved of starting classes the day after Labor Day.

The *RECORD* randomly surveyed approximately five percent of the student body to determine student reaction to the proposal. The survey is only a sample and is not intended to be a scientific survey.

Women Lawyers Face Fewer Barriers

By John Thornton

Law students who plan to have a career and a family may encounter fewer obstacles than their predecessors, according to a report by the Women's Bar Association (WBA).

At a conference entitled, "Part-time Employment: An Attempt at Achieving Flexibility in the Workplace," the WBA presented the report to nearly 100 women lawyers and law students in Pound Hall on February 3. The conference, co-sponsored by the Women's Law Association, addressed the demands of balancing family and career in a profession characterized by an ethic of devotion and long, erratic hours, especially early in one's career.

Of the 95 legal employers responding to the survey, that served as the basis for the report, 50 employers reported

they had an explicit employment policy permitting part-time work for attorneys. Seventy-nine reported they had an explicit maternity leave policy. The report noted that as recently as 1982, few employers had maternity leave policies, and part-time employment of attorneys was rare.

However, the report pointed out that the survey does not reveal how many individuals left their employment because satisfactory accommodations could not be made, the effects that the use of these policies might have on career advancement, and how many people simply refrain from using the available options for fear of negative effects on job security or promotion.

According to the report, many Massachusetts legal employers are becoming more tolerant of family responsibilities and offering alternatives, such

Does Faculty Axe Await LSC Proposal?

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ture their courses to accommodate teaching fellows," said Mate.

In addition, professors will be faced with a more demanding workload. For example, the call for written exam feedback and mid-term examinations may not be acceptable to some faculty members.

When asked if he foresaw the plan's adoption in whole, Clark replied, "I would be amazed."

Any faculty disapproval may stem from a perceived threat to professors' intellectual autonomy. "There is a limit to the mandates that can be applied to teachers of first-year courses. I think that it is appropriate for teachers to maintain peda-

gogical and substantive freedom in the classroom," said Professor Richard Parker.

LEC: Gone, but not Forgotten

The LSC's "Community 2000" proposal may have been beaten to the punch by the now-dormant Legal Education Committee.

Last May, the faculty approved recom-

mendations advanced by the Legal Education Committee. This report, which is now faculty policy, acknowledged the need for a re-dedication to responsive, dynamic academic reform.

Parker, who served on the LEC, pointed out that last year's work does not differ greatly from the current blueprint for change.

"[The LEC] proposed mid-semester feedback, as well. We were very much in favor of the faculty taking its responsibility to education seriously," said Parker.

The drafters of Community 2000 utilized the ideals of the faculty-driven initiative, but did not embrace them wholeheartedly. "[The LEC report] was very vague, and we wanted to get away from idealism towards actual, tangible reform," says Mate.

Relying on his experience in dealing with academic reform, Parker expressed reservations about Community 2000's chances for success. "I see a lot that would meet with resistance," Parker said.

The ad-hoc committee proposed by the Dean will likely resurrect the LEC in some form, despite the LSC's reluctance to revive that particular institution. Fridman said he was concerned that the proposals may get killed or dismembered in committee.

Still, Parker points out the necessity of LEC involvement in the Dean's committee, even if in a much reduced capacity. "The LEC was the product of a year's work and compromise. I don't see any point in reinventing the wheel," Parker said.

One Down, One to Go?

The LSC is optimistic that its lobbying efforts will shove the Community 2000 proposal onto the faculty's immediate reform agenda. After passing through the Dean's committee and undergoing a budgetary analysis, the proposal may come to a vote at a faculty meeting this semester.

Questioned about the proposal's chances for elective consideration this spring, Clark answered, "I am very hopeful."

Parker was more skeptical about the plan's potential for quick approval. "I'd be very surprised if it happened this semester. It took [the LEC] a lot longer than that," Parker said.

Having acknowledged the obstacles to Community 2000's survival, it should be noted that the LSC proposal is in line with last year's faculty approved policy. The Legal Education Committee advanced a challenge in their report that resonates with the spirit of the students' proposed academic reform.

"A change in institutional reform will occur only if there is an institutional will for such a change to occur. That is the overall challenge for the faculty and Dean."

Berkman Center Professors Take on Mickey Mouse Lobby

By Kimberley A. Isbell

Defying the convention that HLS professors not actually practice law, Professors Lawrence Lessig and Charles Nesson '63, and Lecturer on Law Jonathan Zittrain, all affiliated with the Berkman Center for Internet and Society, recently filed suit against the federal government.

The three, joined by Geoffrey Stewart and Pamela Jadwin of Hale and Dorr, filed suit in DC District Court on January 11 on behalf of Eric Eldred, founder of Eldritch Press, a non-profit organization which makes free copies of literary works in the public domain available over the Internet. The aim of the litigation is to challenge the constitutionality of the Sonny Bono Copyright Extension Act of 1998, which retroactively and prospectively extends copyright for an additional 20 years.

The act covers every copyrighted work not yet in the public domain, which includes most works copyrighted in 1923 and renewed in the 1950s. "That's a large number of works at a very crucial time in American history," said Lessig. "There's a lot of publication in this period that

would be great to have generally accessible."

This most recent Congressional enactment is the latest in a long line of copyright extensions which have extended the term of copyright protection from 59 years in 1962 to 95 years under this act.

"Basically, you can watch the copyright clause extend," said Lessig. "It gives as much protection as is necessary to protect Mickey Mouse or Steamboat Willie [a Walt Disney cartoon which would have come into the public domain without this extension]."

According to the complaint, this continuous extension of copyright ignores the balance Congress is required by the Constitution

to strike between encouraging production of literary and other works, and making them available in the public domain.

"The Constitution says that Congress has the power for a limited time to create copyrights for the purpose of encouraging production, and the question this case raises is what's the meaning of 'a limited time' for the purpose of encouraging the creation of these works," Lessig said. "If there's one thing we know, it's that you can't give incentives to dead people. So



Russ Goes His Own Way

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Feingold was praised widely for his defection.

"We had a single courageous senator, Russ Feingold of Wisconsin," said Jonathan Turley, a constitutional law professor at George Washington University Law School. "If there's a profile in courage, it's there."

Sen. Orrin Hatch, a senior member of the Senate Judiciary Committee, also praised Feingold.

"We have one Democrat who was willing to stand up to his own caucus," said the Utah Republican. "Let me tell you, that was a big-time thing."

In an interview conducted with the Milwaukee Journal Sentinel days after the votes, Feingold stated that he was "sure there were some negative feelings behind the scenes [among Democratic colleagues]. There had to have been."

"The caucus prior to [the vote] was a little rough. Without mentioning my name, the comments were, 'Everyone has to be on the team. This is essential.'"

As co-sponsor of the McCain-Feingold Campaign Finance Reform Act, Feingold has never been allied closely with President Clinton, who opposed his proposed reforms. He stated he had not heard from or spoken to anyone at the White House since the vote.

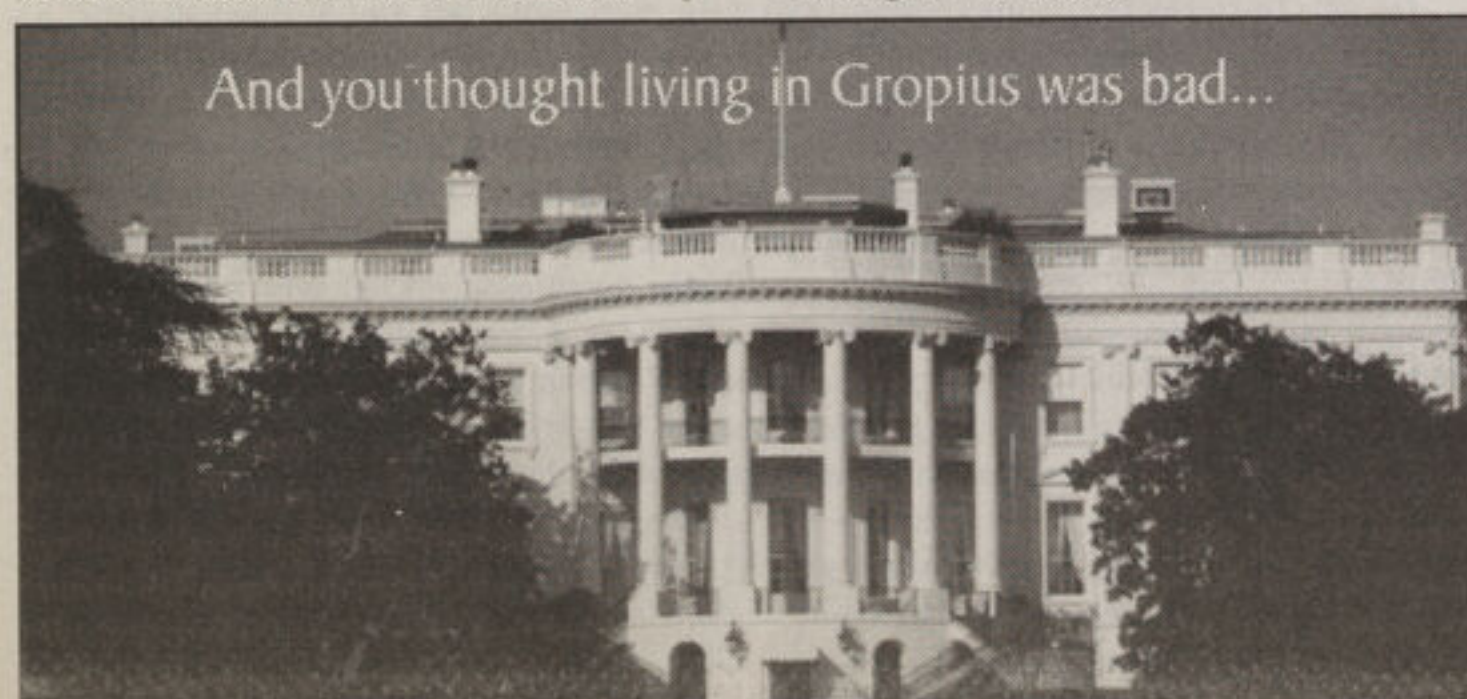
"I don't think I'm Mr. Popular at the White House right now," Feingold said. "But I'm not really talking to them" as long as the President is being tried.

Similarly, Terri Spring, chair of the Democratic Party of Wisconsin, stated that she was "disappointed that Senator Feingold voted with the majority and voted not to dismiss."

"We're getting a lot of very upset people calling," Strug said, referring to reaction to the Senator's vote. "Elderly people crying; other people yelling."

Nevertheless, Feingold's Wisconsin colleague and fellow Democrat, Sen. Herbert Kohl, praised Feingold's independence.

"It's harder to vote for what you don't think is right," Kohl noted. "He voted the way he thought was right. I voted the way I thought was right."



Hawthorne doesn't need any more incentives. The effect of retroactively increasing copyright is not going to get any more work out of people who have already produced their works."

Lessig, Nesson, and Zittrain became involved in the suit when Lessig read an article about Eldred's plans to shut down Eldritch Press in protest of the extension act, and the three began to consider the possibility of mounting a constitutional challenge. The case was especially appealing to the three given the implications of the subject for the Internet and the Berkman Center's mission.

"We're exploring the boundaries in cyberspace between open and closed systems of code, governance, education, and commerce," said Zittrain, "and certainly the degree of protection intellectual property needs on the net is one of the biggest questions facing the nascent field of cyberlaw. This is one forum in which to really flush out whether we think there's a sea change in the underlying costs and benefits of intellectual property protection, the balance that Congress is asked to strike within the limits set by the Constitution."

Since the Berkman Center is involved, it should come as no surprise that they have already set up a website (located at <http://cyber.law.harvard.edu/cc>) from which they plan disseminate information and get feedback from the public at large. In fact, they've formed a coalition around the website, called Copyright's Commons.

"The reason it's such a strange name is that it's not remembered the extent to which copyright is meant to have a common's component to it," said Zittrain.

The Berkman Center will be having an informational session on the case this Friday, February 5, at 3:00 p.m. in Pound 202. Interested students will have a chance to meet the plaintiff, Eric Eldred, and the rest of the lawyers working on the case, as well as learn ways to become more involved in the suit.

"Dances With Wolves" Star to Be Tried in Ames Courtroom

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ences. The policy is based upon the need to offer law students an opportunity to see an Indian nation court at work."

Navajo Nation v. Means is one of the most important cases to arise in Indian law in recent years and is likely to reach the U.S. Supreme Court. The case involves the Navajo Nation's criminal prosecution of Russell Means, a member of the Oglala Sioux Tribe and a prominent figure among Native Americans. Means is well-known for his appearances in major movies including "Dances With Wolves" and "The Last of the Mohicans." He is charged with one count of "Threatening" and two counts of "Battery" stemming from an aggressive exchange with his in-laws on the Navajo reservation in December 1997.

Means is arguing that the Navajo Nation has no jurisdiction over him, based on precedent established in a 1990 U.S.

Supreme Court decision, *Duro v. Reina*. In *Duro*, the Supreme Court found that with regard to criminal jurisdiction, a tribe's inherent sovereign powers extend only to members of the tribe. That decision created numerous difficulties for Indian tribes, to which Congress responded by amending the Indian Civil Rights Act to assert that a tribe's criminal jurisdiction extends to all Indians. Congress called the action a 'recognition' of inherent rights that Indian tribes have always held.

Means' attorney, John Trebon, is the attorney who successfully argued *Duro* before the Supreme Court, only to have his victory negated by Congress. Trebon will argue that Means is the victim of racial discrimination, that the Navajo Nation would have no authority over him but for the fact that he is Indian. He will also argue that Congress does not have the authority to trump the U.S. Supreme Court in this area of law.



Briefs

Publishers Clearinghouse Sued for Deceptive Advertising

The state of Wisconsin has sued Publishers Clearing House, accusing it of using deceptive advertising to persuade consumers to buy magazines and merchandise and of illegally targeting the elderly.

The company's mailed advertisements give recipients the impression they have won or will win large cash prizes or can improve their chances of winning if they buy the company's products, Attorney General James Doyle said Thursday. The lawsuit seeks all profits the sweepstakes made from the unlawful sale of merchandise in the state and requests restitution for consumers.

Doyle showed a videotape of a 79-year-old resident of Dells, Wisconsin, identified only as Leonard, who has spent \$10,000 on Publishers Clearing House merchandise since 1989 without winning.

Publishers Clearing House, based in Port Washington, N.Y., said it "has thousands of satisfied customers in Wisconsin."

"In general, we believe our promotions are clear and easy to understand and the overwhelming majority of consumers who play the sweepstakes know how to play and know no purchase is necessary," vice president Todd Sloane said.

Last year, American Family Publishers agreed to pay Wisconsin and 24 other states \$50,000 each to settle allegations of deceptive sweepstakes advertising.

—Associated Press

Nicole Seligman '83 Delivers Apology for President

Besides serving on the Harvard Law Review and clerking for the U.S. Supreme Court, Nicole Seligman '83 now has one more item to add to her resume: official apologist for President Clinton. During the deposition of Monica Lewinsky last Monday, Seligman, who serves as one of Clinton's private attorneys and has assisted with his defense in the Senate trial, read a statement that apologized to Lewinsky "on behalf of the president for all the trouble the investigation and impeachment trial had caused her."

The deposition of the former White House intern took place behind closed doors in the Mayflower Hotel's presidential suite, but was videotaped for senators weighing the impeachment charges. Although this represented the first time Lewinsky was exposed to possible questioning by Clinton's lawyers, Seligman and the two other Clinton attorneys who attended the session passed up the opportunity to challenge Lewinsky's statements.

Seligman, who graduated magna cum laude from Harvard Law School in 1983 and clerked for Justice Thurgood Marshall from 1984-85, is currently a partner at the law firm Williams & Connolly in Washington, D.C.

—Associated Press

Thomas E. Perez '87 Named Director of HHS Office of Civil Rights

Health and Human Services (HHS) Secretary Donna E. Shalala recently announced that she will appoint Thomas E. Perez '87 as director of the HHS Office for Civil Rights. Perez will work to ensure that programs and activities funded by the department are in compliance with all civil rights laws and that people have equal access to HHS programs without discrimination.

"HHS is fortunate in gaining the benefit of Tom Perez's extensive expertise in civil rights," said Secretary Shalala. "His vast knowledge will be a major plus for the Clinton administration as we work to determine our policies for our civil rights program."

Perez will come to HHS from the Department of Justice, where he served as deputy assistant attorney general for civil rights. In this capacity, he assisted in policy development and oversight of the litigation activities of the civil rights division. From 1995 to 1998 he was on detail from the Justice Department and served as special counsel to Sen. Edward M. Kennedy. During that time, he was the senator's principal adviser on civil rights, criminal justice, and certain constitutional issues.

Perez joined the Justice Department in 1989 through its honors program and served as a trial lawyer in the civil rights division's criminal section before becoming deputy chief of that division. A first generation Dominican-American, Perez graduated from Harvard Law School and Harvard's Kennedy School of Government in 1987.

—Associated Press

Anti-AIDS Treatment Order is Fought

Parents of an infant boy are fighting a court order that they treat him with anti-AIDS drugs because his mother is HIV-positive. The court gave the state custody of eight-week-old Felix Tyson, ordered six weeks of AZT treatments, and barred his mother from breast-feeding him. But the boy's parents, Kathleen and David Tyson, do not believe HIV causes AIDS and say that AZT is toxic and ineffective.

"Breast-feeding is simply better," said Tyson, 47. "It enhances the immune system, even if the mom is HIV-positive." Last year, Mrs. Tyson, 38, tested positive for HIV, the virus that medical authorities believe causes AIDS.

An early test found Felix was not infected with HIV, but tests on newborns are often unreliable. Furthermore, taking AZT as a preventative measure, even among HIV-negative newborns, greatly reduces their risk of contracting the virus through breast milk.

Though the state has custody, Felix remains in the family home, where his parents have been feeding the boy infant formula and giving him the treatments every six hours, as ordered. The state is monitoring the treatment. The Tysons have a Feb. 9 court hearing to regain full custody of their son.

Dr. Paul Lewis, director of the pediatric HIV clinic at Oregon Health Sciences University in Portland, said AIDS and its virus have become "the most heavily researched disease in the history of medicine. There is currently no reasonable doubt that AIDS is caused by HIV."

—Associated Press

~ In Memorium ~

Lewis J Gorin Jr. '39 Dies at 84

More renowned for a joke he instigated before attending HLS than for his subsequent career in business, Lewis J Gorin, Jr., '39 passed away at his Louisville, Ky. home on Jan. 1.

Inspired by a friendly wager, Gorin established the Veterans of Future Wars in March 1936. The Princeton senior went on to proclaim himself first national commander of the organization, whose sole purpose was to procure a \$1000 bonus for the approximately 15 million young men who were bound to serve in the forthcoming World War.

Buoyed by rampant public animosity against the American Legion and the Veterans of Foreign Wars for having coerced Congress into enacting a \$2 billion bonus hike for World War I veterans, a majority of whom had never stepped a foot outside the U.S., the movement soon mushroomed. Tens of thousands of members enlisted into Veterans of Future Wars chapter on campuses throughout the nation and a women's auxiliary, Association of Future Gold Star Mothers, was also formed. The women's organization sought free trips to Europe for its members to visit the future graves of their unborn sons.

At the same time, the movement also drew much criticism from military establishment, which dismissed Gorin's joke as a tasteless manifestation of pacifism and communism. Gorin, on the other hand, as a descendant of Atriums Ward, a Revolutionary war general, regarded himself as a true patriot. After graduating from the Law School, Gorin did in fact serve in the U.S. armed forces in World War II, in France, Italy and Germany. Following the war, Gorin worked as an attorney in Louisville before joining Reynolds Metals, a local aluminum company. He later became an executive in the firm's international subsidiary and was stationed in Bermuda and Richmond, Va.

Gorin is survived by his wife, Eleanor; two children and five grandchildren.

Charles F. Naylor '38, Boston Trial Lawyer, Died of Pneumonia

Charles F. Naylor, a retired Boston lawyer, died January 16 of pneumonia in Massachusetts General Hospital, as reported in the Boston Globe. He was 85.

Mr. Naylor practiced law for 50 years, specializing in medical malpractice cases. He had offices in Boston and New York City, and retired in 1990.

Mr. Naylor was so dedicated to his job that in 1983, while suffering from a potentially fatal blood infection, he left his hospital bed and argued a case in Middlesex Superior Court with a nurse at his side. In 1986, he represented a Hyannis man in a botched hair-transplant case and won his client \$175,000.

A 70-year Brookline resident, Mr. Naylor attended public school there and set up a scholarship fund for high school seniors. He graduated from Dartmouth College in 1935 and from Harvard Law School in 1938.

He served four years in the Coast Guard during World War II. He was active in the Disabled American Veterans, American Legion, Jewish War Veterans, and Coast Guard Reserve Officers' Shield Club.

He was a member of the Norfolk County, Middlesex County, Boston, Massachusetts, and American bar associations, the Association of Trial Lawyers of America, and the New York Trial Lawyers Association, and was director of the Massachusetts Trial Lawyers Association.

Mr. Naylor maintained an interest in local politics. He was chairman of the Outdoor Advertising Authority under Governor Robert F. Bradford. He also worked on the campaigns of Francis Bellotti for attorney general and Francis Sargent for governor.

He leaves his wife, Phyllis (Ponn); a daughter, Nancy H. of Hollywood, Calif.; and two sisters, Bernice J. Ross of Boston and Ruth Conroy Robinson of Chestnut Hill.

Theodore Tannenwald '39, Retired Tax Judge, Died at 82

Theodore Tannenwald, Jr., 82, a retired judge of the U.S. Tax Court, died of a heart attack January 17, as reported by The Washington Times. He was 82.

Judge Tannenwald was appointed to the U.S. Tax Court by President Johnson in 1965 and reappointed in 1974. He was elected chief judge in 1981 and served in that position until 1983. In 1983, he retired and assumed senior status.

He was born in Valatie, N.Y., graduated from Brown University and earned a law degree from Harvard Law School, where he was awarded the Fay Diploma for achieving the highest three-year average.

He practiced tax law from 1939 to 1965 with Weil, Gotschal and Manges in New York, except for absences for World War II and federal government service.

He served in the State Department from 1942 to 1943 and as consultant to Secretary of Defense James Forrestal from 1946 to 1949. He was a member of President Kennedy's Task Force on Foreign Assistance in 1961.

Judge Tannenwald was an adjunct professor at the University of Miami and University of San Diego schools of law and was a professorial lecturer at George Washington University School of Law at various times from 1968 to 1998. He was a member of the Council on Foreign Relations, National Executive Council, American Jewish Committee and the Cosmos Club of Washington. He received the Distinguished Service Award from the tax section of the American Bar Association in 1998.

Survivors include his wife of 58 years, Selma Tannenwald; two sons, Peter Tannenwald and Robert Tannenwald of Newton, Mass.; and three grandchildren.

ABA Was A-OK Under Jerome J. Shestack '49

By Steve V. Scali

Many give lip service to professionalism, but few practice what they preach. Former ABA President Jerome J. Shestack '49 isn't one of them, and he has the Frequent Flyer miles to prove it.

"In all, I have spoken in some two-thirds of our states on more than 200 occasions and I've written close to that number of op-ed articles in bar association journals," said Shestack, a former RECORD President who served the ABA from 1997-1998.

Nevertheless, Shestack feels his most important means of communicating with ABA members is through the monthly President's Message in the ABA Journal.

"These writings describe our primary focus on vital issues and initiatives," Shestack said. "More importantly, I hope they show an organization that is relevant to the profession, to the justice system and to the public we serve."

"I believe most lawyers want to live by these professional values," he continued,

noting that such civic virtue is "not easy in this competitive, often crass, bottom-line-driven world."

"We know what our profession has done, and can do, to make society more just, more free, more equal, more civilized. It's good to take pride in our profession," Shestack noted.

"I believe that satisfaction in our practice comes from seeing our practice as a profession that elicits ideals and pride and responsibility," Shestack wrote in one article that he is inspired by the ideal of "a profession that values dispassionate analysis and embraces civility and elegance, that employs self-discipline, and sets limits, even upon the desire to win."

Shestack also emphasized that each of a lawyer's cases involves her "in the human struggle with all its hope, its futility, its wonder, its grandeur." He constantly stressed that striving for the public good is an inseparable part of the legal profession.

Under Shestack's leadership, the ABA undertook a number of innovative projects. For instance, the ABA convened

experts to better integrate students and employees with physical and mental disabilities under the Americans With Disabilities Act.

Shestack also appointed a commission to address questions relating to lawyers who make political contributions in exchange for business.

At one such meeting, the ABA's House of Delegates addressed "hot topics," including "a resolution condemning political contributions to influence the selection of bond counsel, adopted a resolution addressing legal aspects of needle-exchange programs and refused to endorse a resolution on physician-assisted suicide legislation."

Last spring, Shestack led the Section of International Law and the Section of Business Law to Beijing where they jointly established a technical assistance program with the All China Law Association, the Chinese equivalent of the ABA.

"The result is an initiative supporting a just rule of law, including legal aid, judicial education, contract stability and strengthening an independent bar."

Shestack said. "We remain concerned with human rights failings in China and believe that strengthening elements of the rule of law will ultimately serve the interests of a just world order."

Later in the year, a joint committee consisting of the ABA, the American Arbitration Association and the American Medical Association was convened to address what Shestack characterized as "the need for fair, efficient and economical means of resolving disputes between HMOs and consumers."

Shestack summed up his views on what the legal profession should be like: "a tradition that has ideals, pride, nobility, guts and honor. That's the kind of profession in which we can find satisfaction."

He sees room for improvement of the legal profession in several capacities, including "more to deal with the quality of life diminished by unconscionable demands for billable hours. More to convince solo practitioners of the values we offer them. More to promote mediation and arbitration, not as alternative dispute resolution but as appropriate dispute resolution."

Juror Says *Grace* Decision Was "Compromise Verdict"

Continued from WOBURN, p. 1

educational film series designed for legal academics interested in addressing ethical issues in the legal practice, said the Institute's Marilyn Berger.

The film featured an interview with Judge Walter Skinner '52, whose decision to separate the trial into contamination and causation phases has become fodder for Monday Morning Quarterbacks who've taken a sharp interest in the case.

The decision meant the plaintiffs' lawyers could not call the plaintiffs to the witness stand to present emotional testimony about the tragic deaths of their children by leukemia without first proving that the defendants' chemicals contaminated the Woburn wells.

The bifurcation decision was hailed by defense lawyers from the firms of Foley, Hoag & Eliot and Hale & Dorr, who represented W.R. Grace and Beatrice Foods respectively. Defense attorney Jerome Facher '51 of Hale & Dorr, an adjunct professor at HLS for 29 years, insisted it was imperative that the plaintiffs not be allowed to testify.

Skinner essentially bought the defense counsels' arguments. He said he feared if he allowed the plaintiffs to testify about the death of their children, the jury would have had a difficult time focusing objectively on the facts.

A juror who spoke in the film disputed this. She expressed confidence that the jury could see through their emotion and get to the heart of the matter.

Juror's Revelations Raise Questions About System

A number of participants and attendees agreed that the most interesting presentation they heard in the morning was that of Hariett Clark, one of the original jurors.

The bifurcation decision meant that the first half of the trial, the "hydrogeology phase" as Michael Keating '65 of Foley, Hoag put it, was exceedingly technical. Proceedings went on for six months as expert witnesses were subjected to intensive cross-examination by the defense.

Clark said that after six months, the task of answering the judge's questions without the benefit of notes was practically impossible. In addition, the technical and arbitrary nature of the questions similarly made jury deliberations problematic.

"How could anyone possibly say for sure that the wells were contaminated by this company's chemicals on a specific date," she asked.

Clark said the decision to find W.R. Grace not liable and Beatrice liable for

contaminating the wells was a "compromise verdict" necessary to break a deadlock.

Clark noted that the jury foreman was scheduled to have a heart operation in a short while, and naming an alternate would require the deliberations to begin anew.

Plaintiffs lawyers Jan Schlichtmann and Kevin Conway picked up on this theme, claiming that defense counsel had an incentive to obfuscate the facts behind complicated technical "crapese," as Schlichtmann called it.

Facher denied that the defense obfuscated the facts, calling it a "stupid tactic." "I have confidence in the jury system," he said. "It is the attorneys' job to take a complex situation and simplify it and present it to the jury."

William Cheeseman '68 of Foley, Hoag took a less categorical approach. "To some extent we did obfuscate by taking so much time and presenting too much evidence," he said. "But deliberately trying to obfuscate is a poor tactic because it clouds the outcome, it doesn't increase the certainty that you'll win."

No Single Lesson

The participants had vastly differing views on what *Grace* was all about.

"This case was about telling a story," said Schlichtmann. "A story of how corporate irresponsibility led to the unnecessary deaths of children."

According to Schlichtmann, even though the case largely failed, the lesson remains that a company cannot enter a community and destroy it and still have a future.

The case also turned Schlichtmann into an ardent cynic about the adversary system and a standard-bearer of alternative dispute resolution.

"The conflict model of dispute resolution doesn't work," he said in his morning presentation. "The system is so distorted that it forces people to make terrible choices and take extreme positions, instead of facilitating them working together to do the right thing."

Naturally, counsels for the defense were more enthusiastic about the adversary system.

"This was not a case of moral compromise," said Keating.

It is the traditional lawyer's ethic that everyone is entitled to the best representation possible, Cheeseman said. "Mike's and my firm represented Grace, we represent tobacco companies, we represent the plaintiffs in the Boston Latin case," he said. "Many of our clients are very unpopular, even within the firm."

But as long as everyone is vigorously represented regardless of what side

they're on, justice will be served best, he concluded.

For Nesson, the case taught him that a lawyer must learn to deal with disappointment.

"It was incredibly deflating when the First Circuit looked at what happened, held their noses and said 'tough luck, you're outta here,'" he said. "I had firmly believed that if you worked hard and long and fought the good fight, you could get the justice system to work for you."

In retrospect, however, Nesson

believes the case was ultimately a victory. "Outside of court, our version of the story has prevailed," he said.

"Grace, of course, still pushes its version."

Indeed, just down the hall, the Foley Hoag attorneys were doing exactly that.

"This case was about hydrogeology," Keating said.

Facher had a different theory in the documentary.

"This case was about money," he said. "It was about extracting money from these companies."

This version was disputed by one of the plaintiffs who participated in the conference, Donna Robbins.

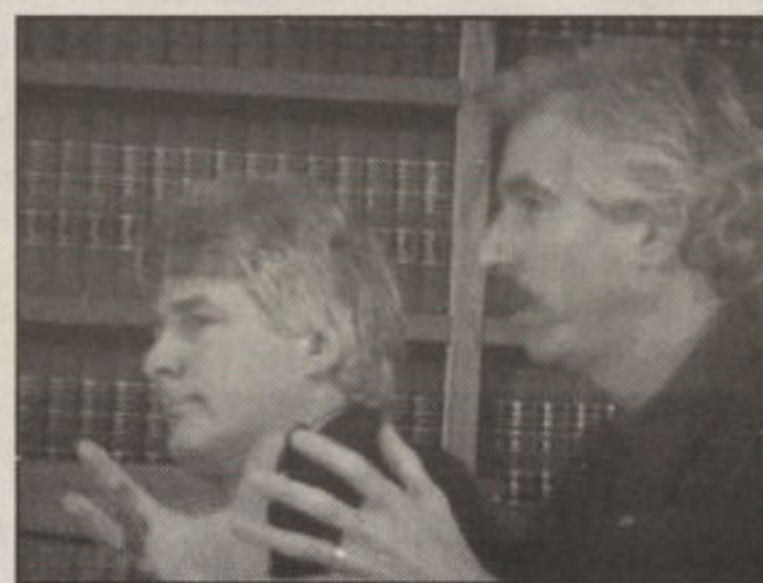
"Money won't bring my child back," she said.

Anne Anderson added she wanted recognition that she was wronged.

Lost Voices

Prof. Arthur Miller '58, who moderated the afternoon panel discussion between the original participants, inadvertently brought home one of the major themes of the saga.

Miller bantered freely with the counsels, Kennedy, and Harr. When it came to the plaintiff women, however, he asked no follow-up questions, quickly returning his attention to the others.



Plaintiffs lawyers Kevin Conway and Jan Schlichtmann at the conference

Audience member Lauren Stiller Rikleen made the observation during the question and answer session that just as the plaintiffs had lost their voices in the trial by not being allowed to testify, so they had lost their voices on this panel. The

audience burst into appreciative applause.

"I'd been feeling that this panel was a conversation between you and those lawyers," Robbins told Miller. "Even though we may be pretty naïve in our understandings of the legal system, the children have

been forgotten in all of this. The children brought this on and we never got to speak for them."

At the end of the session, Miller pointed out that their children's story lives when he told the women that he hoped "you take some comfort that your children are in the classroom."

Hollywood's Poetic License

Unlike the trial itself, the conference participants were unanimous in their verdict about the movie version of "A Civil Action." "The movie was a great big ice cream cone with jimmies sprinkled on top," said Facher. "The ice cream was fiction and the jimmies were reality."

Schlichtmann said the film's portrayal of him as a "heartless huckster" was only partly true, but he added "the power of the movie is that the story is told." Therefore he forgives the inaccuracies.

Facher said he liked the book better. "Although it was a good scene in the movie, nobody in his right mind would leave a twenty-dollar bill near Jan Schlichtmann."

Schlichtmann also preferred the book, though he objected to Harr's claim he was a "lousy dancer."

"I think that the fact that I was played by John Travolta speaks for itself," he said.

The Berkman Center's Civil Action Project

Last weekend's conference was the cornerstone of an ongoing project to use "A Civil Action" as a teaching tool for both law students and non-lawyers around the world. Transcripts and videotapes of the presentations and panel discussions will be made available on the Berkman Center website at <www.cyber.harvard.edu/acivilaction>.

Across the Wire



News from the East, West, South and Overseas

HIV+ Blood Recipients Sue Vampiric Industry

TRENTON, N.J. (AP) — Bobby Kelly died in his father's arms, unable to bounce back again from the AIDS virus he contracted from medication meant to stop internal bleeding caused by his hemophilia.

Newly graduated from Seton Hall University, Bobby was just 22 when he succumbed to an AIDS-related infection in October 1992.

Two years later, Elaine and Robert Kelly buried their oldest son, Dennis, a 35-year-old warehouse manager with a wife and 5-year-old boy, killed by AIDS contracted from tainted clotting medicine.

"Our lives are destroyed now," Mrs. Kelly said last week. "They could never give us enough money to make up for the loss."

But the Kellys and other hemophiliacs and their families do want financial compensation — enough to persuade blood product makers to ensure that there's never another catastrophe like the one that left half the country's 16,000 hemophiliacs HIV-infected in the early 1980s and gradually killed most of them.

Hemophilia is a painful, usually hereditary disorder in which sporadic bleeding episodes destroy joints and damage organs.

Victims and relatives claim the four drug companies that sold freeze-dried clotting proteins — derived from the blood of thousands of paid donors from prisons and U.S. and Haitian slums — delayed taking expensive steps to purify that blood in order to keep their profits high.

The companies have denied that, triggering years of court battles. Many families sought justice, but faced such difficult legal hurdles that they dropped their lawsuits and accepted a \$100,000 settlement offer, releasing the four drug companies from any future claims.

Nationwide, 5,836 of the 6,136 eligible patients or their families had been paid as of December, with the rest delayed by red tape, said Guy Esnouf, spokesman for the four manufacturers: Alpha Therapeutics of Los Angeles; Armour Pharmaceutical of Collegeville, Pa.; Baxter International of Deerfield, Ill., and Bayer Inc. of Pittsburgh.

"These people had been injured by our products and we wanted to provide some financial relief without them having to sue," Esnouf said.

But in New Jersey, the quest for justice drags on as the manufacturers try to get the courts to declare unconstitutional a 1996 law erasing their first line of defense: the two-year statute of limitations for filing product liability claims.

The manufacturers argue that the law is unconstitutional because it narrowly targets them, not allowing lawsuits against hospitals or other nonprofit agencies that handled blood-clotting products.

Superior Court Judge Douglas Wolfson in New Brunswick, who oversees all hemophilia-AIDS litigation in the state, ruled the law constitutional in September 1997 when the issue was first raised in a victim's trial. The companies have appealed the ruling.

Nationwide, about 200 lawsuits are still pending, including two dozen in New Jersey that should benefit from the May 1996 "revival law," and 60 in New York State,

which enacted a copycat law in December 1997 that the industry plans to fight.

While the companies also are appealing one \$2 million jury verdict against them, most victims whose cases came to trial couldn't win because they did not sue within two years of learning they were infected with HIV — something many wanted to keep secret.

"We couldn't tell anybody because we were so afraid for" the boys, recalled Mrs. Kelly. "We found out the same day that they were both infected."

Rich Vogel, who learned clotting products infected him with HIV in 1985, said that suing the manufacturers is "the only way they're going to learn a lesson, from a big monetary loss."

While the 42-year-old freelance photographer has so far remained healthy, the infection cost him his first marriage and a chance for children. He fears the slightest sign of illness might be the onset of AIDS. "It's almost like (the manufacturers) didn't learn anything from the '80s," he said. "We don't want this to happen again."

British Soccer Coach Urged to Resign for Views

LONDON (AP) — England's national soccer coach intends to resist calls to quit following his reported comment that the disabled are paying for "the sins of an earlier life."

The Football Association, the governing body of English soccer, is expected to decide Glenn Hoddle's future on Tuesday.

Hoddle, whose remark was published in the Times of London on Saturday, says his words were "misinterpreted" and he is considering legal action against the newspaper.

Prime Minister Tony Blair thinks it would be difficult for Hoddle to stay, and the team's corporate sponsor is among those criticizing the coach.

"If he said what he is reported to have said in the way he is reported to have said it then I think that was very wrong," Blair said.

Hoddle insists his comment was taken out of context, but he has yet to precisely spell out what he said about the disabled during the disputed interview.

"I'm not going to resign over this because at the end of the day I didn't say those things," he told Independent Tele-

vision News.

"It couldn't be further from the truth from what I believe about the handicapped and the disabled. The work that I've done with them over 25-26 years is there for everyone to see."

Hoddle told Sky News he was "dreadfully sorry" for what had been written.

"It has been taken out of my hands and I wish I had never taken this (reporter) into my confidence," he said. "But at the end of the day I made the mistake and I want to put the record straight and say that these people are not being punished for their sins."

The flap comes a few days before England plays World Cup champion France in an exhibition game at Wembley Stadium. Hoddle is to announce his lineup this week but may be fired or asked to resign before then.

"There is a considerable need for urgency," said David Davies, acting chief executive of the FA. "There is also a need for considerable thought to be given on this matter."

Davies said Hoddle's fate will be decided by the actual FA chairman and senior

members of the international committee.

Mark Lazenby, marketing director of the insurance company Nationwide, which last week signed a \$13 million sponsorship of the England team, called Hoddle irresponsible.

"Glenn Hoddle has to understand that as a personality he can't escape the fact that he has a responsibility to ensure that his personal views shouldn't be confused with those of the England team, the FA or its sponsors," Lazenby said.

"Nationwide will not allow its good reputation to be tarnished in any way."

Hoddle had been criticized even before

this dispute. His player personnel decisions were questioned in the media and he has been blamed for England's poor showing during qualifying for the 2000 European Championship. England is in third place in its group behind Poland and Sweden.

Hoddle's strong Christian beliefs prompted ridicule in some newspapers. He was mocked for enlisting a faith healer before the World Cup to help players recover from injuries.

The faith healer, Eileen Drewery, said on TV that Hoddle has been treated "worse than Saddam Hussein" regarding the contested remark.

Florida Tobacco Verdict Overturned

TALLAHASSEE, Fla. (AP) — A Florida appeals court has overturned a landmark \$1 million award to the family of a smoker who died of lung cancer.

In June, a Jacksonville jury ordered Brown & Williamson Tobacco Corp. to pay the family of Roland Maddox \$1 million.

In an unsigned one-paragraph order, the appellate court on Friday vacated the award and ordered the case transferred to either Palm Beach County or Broward County in south Florida and not Jacksonville, some 275 miles away.

The appeals court did not explain its decision. But two months after the \$1 million award, it said the case should have been tried in south Florida, near Maddox's hometown.

In October, a trial judge in Jacksonville refused to overturn the award but transferred the case to a Palm Beach County court for any further legal issues. Brown & Williamson appealed.

The award was the first time punitive damages were awarded in a tobacco liability case and the third time a jury awarded

compensatory damages. The first two cases also were overturned on appeal.

An attorney for the tobacco company said he believed there were numerous errors in the original trial.

"It is now clear that the trial should never have occurred in Jacksonville," Thomas Riley said in a statement released by Brown & Williamson. He predicted that court decisions since then would ensure a fair trial "if this suit is ever retried."

An attorney in the office of Jacksonville lawyer Norwood "Woody" Wilner, who represented Maddox's family, said there was a question of the appeals court's jurisdiction to decide the case.

"We are likely to appeal, but it is a client's decision," Stephanie Hartley said.

Wilner was the only apparent connection the case had to Jacksonville. Maddox was from Palm Beach County.

Maddox died at age 67 after 50 years of smoking two packs of Lucky Strikes a day. He quit smoking in 1995, was diagnosed with lung cancer in the fall of 1996 and died a year later.

Death Penalty Bias Claim Rejected

TRENTON, N.J. (AP) — The New Jersey Supreme Court on Feb. 1 upheld the state's death penalty law, rejecting an argument that blacks disproportionately receive the sentence.

After two years of deliberation, the court ruled 6-1 that there was insufficient evidence to support the argument.

The case centered on death row inmate Donald Loftin, a black man convicted of killing a gas station attendant during a 1992 robbery.

Loftin's attorneys said an analysis of

cases showed blacks had a higher risk of receiving the death penalty for comparable crimes than non-blacks.

The high court appointed a retired judge to study the death penalty as applied to blacks and whites. He found a nearly equal percentage of blacks and whites accused of capital crimes received the death sentence.

There are 14 inmates on death row, six of whom are black. No one has been executed in New Jersey since the state's death penalty law was enacted in 1982.

Anti-Abortion Web Site Held Liable in Doctor's Murder

PORTLAND, Ore. (AP) — "Wanted" posters and a Web site listing names and addresses of "baby butchers" amount to illegal threats, and the anti-abortion activists who created them must pay \$107 million in damages, a federal jury says.

"The jury saw the posters for what they are — a hit list for terrorists," said Gloria Feldt, president of Planned Parenthood, which joined several abortion doctors and a clinic in suing the activists.

Yet within minutes of Tuesday's verdict, First Amendment experts said it went too far and defendants said they would appeal, calling it a threat to constitutionally protected political speech.

"It's really just a statement from the court that says, 'Please shut up,'" said defendant Michael Bray. "It's an obscene assault upon the right to free speech. It says that when an abortionist cries out that he feels frightened by the speech of others, that the speakers should shut

their mouths."

The suit was filed under the U.S. racketeering statute and a 1994 federal law that makes it illegal to incite violence against abortion doctors or their patients.

Unlike previous cases brought under the 1994 law, this one did not involve any physical confrontations or explicit threats. Because of that, the anti-abortion activists contended the Internet site and the posters were protected by the First Amendment.

At issue was a Web site called "The Nuremberg Files" that lists hundreds of abortion doctors accused of committing "crimes against humanity" and invites readers to send in doctors' addresses, license plate numbers and even the names of their children. When three doctors on the list were killed, their names were shown crossed off.

Wild West-style posters were handed out at rallies and in abortion doctors'

neighborhoods, offering a \$5,000 reward for information about a "Deadly Dozen" doctors.

The plaintiffs now want an injunction shutting down the Web site.

"We have no intention of squelching free speech," said Dr. Elizabeth Newhall. "Free speech is not in jeopardy. Women and their providers are."

During the three-week trial, doctors who performed abortions who were on the list testified that they lived in constant fear, used disguises, bodyguards and bulletproof vests, and instructed their children to crouch in the bathtub if they heard gunfire.

The defendants maintained they were simply political protesters collecting data on doctors in hopes of one day putting them on trial like Nazi war criminals were at Nuremberg.

The jury took 4 1/2 days to reach its verdict, which consisted of \$106.5 million in punitive damages and \$500,000 in compensatory damages. As part of the tight security surrounding the case, the judge said the names of the eight jurors will never be made public.

Defendants emphasized the verdict

would not alter their tactics, and said the huge jury verdict would have nothing more than symbolic impact because they have transferred their assets to make themselves "judgment-proof."

Some legal experts said the verdict is on shaky ground because U.S. District Judge Robert E. Jones used a lesser standard than the Supreme Court, which said threats must be likely to cause "imminent lawless action."

Jones told the jury that the posters and Web site should be considered threats if they can be taken as such by a "reasonable person."

Herman Schwartz, a First Amendment expert at American University in Washington, said the verdict goes too far.

"We haven't really reached the stage in free speech that merely saying things without the likelihood that they'll be acted on soon amounts to a threat, a real threat," he said.

"The anti-abortion people have been saying these kinds of things for years. This talk that they're murderers, that they're mass murderers even, is protected speech. We're very solicitous of speech, even the speech we hate."

Civil Rights Groups Sue UC-Berkeley

SAN FRANCISCO (AP) — Jesus Rios started working in the fields at age 8, dug ditches with his father after high school classes and graduated with a grade-point average above 4.0.

Gregory McConnell, Jr., grandson of a black law professor, also got high grades in high school, played varsity tennis, and won a full-tuition scholarship to an East Coast college.

Yet both McConnell and Rios were denied admission last fall to the University of California at Berkeley.

They joined five other high-achieving minorities Tuesday in a lawsuit accusing the university system's flagship campus of using discriminatory entrance policies that placed too much weight on test scores and advanced-placement courses.

"This is an admissions process that grants preferences to the privileged," attorney Joseph Jaramillo of the Mexican American Legal Defense and Educational Fund said at a news conference.

The weight given to the Scholastic Aptitude Test (SAT), an examination of English and math fluency, and advanced-placement grades has a discriminatory effect on blacks, Hispanics and Filipinos, and lacks "educational justification," the suit said.

Advanced-placement courses, worth an

additional grade point in UC admissions ratings, are far more available in predominantly white high schools, Jaramillo said.

More than half of California's high schools, disproportionately in minority areas, offered no advanced-placement classes during the 1997-98 academic year, the lawyers said.

"What advanced-placement and SAT scores don't show is talent and ability to succeed in college," said another of the plaintiffs, Justine Certeza, a freshman at UC-San Diego.

The lawsuit seeks court orders requiring Berkeley to admit the seven minority students and adopt an admissions policy that gives qualified blacks, Hispanics and Filipinos "a fair and equal opportunity."

Such policies are still possible despite California's ban on race and sex preferences in state and local government programs, the lawsuit said.

UC-Berkeley Chancellor Robert Berdahl said the campus retains "a strong commitment to access and diversity" despite "a new set of legal limitations" — the UC Regents' ban on affirmative action in admissions, later broadened to all state and local government programs by Proposition 209.

When the regents' policy took effect for freshmen last fall, minority admissions dropped at all UC campuses, and particularly at Berkeley, the most prestigious.

The Berkeley campus has reduced its reliance on test scores and "intensified our recruitment efforts" for underrepresented minorities, Berdahl said.

Judge Blocks Internet Pornography Law

PHILADELPHIA (AP) — A federal judge issued a preliminary injunction Monday to continue blocking a federal law aimed at shielding children from online pornography.

U.S. District Judge Lowell A. Reed said the Child Online Protection Act could have the effect of hindering constitutionally protected speech and issued a preliminary injunction that shields Web site operators from prosecution. The judge had issued a temporary restraining order in the fall that expired Monday.

"Perhaps we do the minors of this country harm if First Amendment protections, which they will with age inherit fully, are chipped away in the name of their protection," Reed wrote.

The American Civil Liberties Union (ACLU) filed suit against the law on behalf of 17 clients.

"We're thrilled that the judge has realized at this stage that our clients have some very credible fears," ACLU spokeswoman Emily Whitfield said.

Justice Department lawyers must decide whether to appeal the preliminary injunction, ask for a full-blown trial or agree to allow Reed's decision to become permanent. Department spokeswoman Chris Watney would only say that the department will review the decision.

One of the bill's sponsors, Rep. James Greenwood, R-Pa., said he hopes the law will eventually be enforced.

"We still hope to prevail in the Appeals Court, but if not, we will continue to revise this legislation until it passes constitutional muster," Greenwood said.

The law, the second major effort by Congress to protect children on the Internet, would require commercial Web sites to collect a credit card number or some other access code as proof of age before allowing Internet users to view online material "harmful to minors."

Violators would face penalties of up to six months in jail and \$150,000 per day in fines.

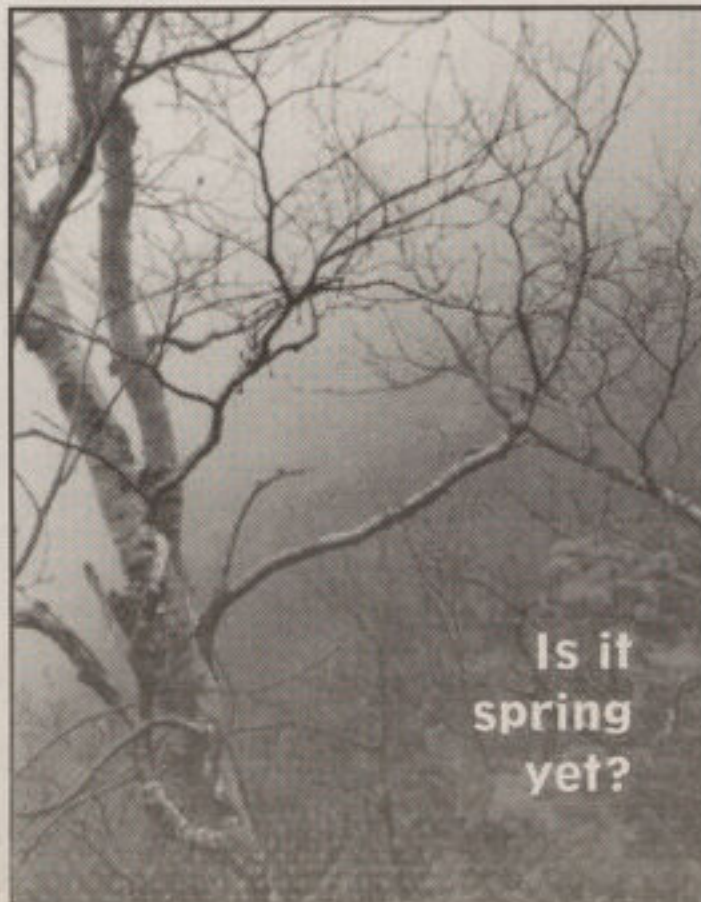
Supporters say the measure is a sensible way to keep Internet pornography away from children. Unlike the Communications Decency Act of 1996, which the Supreme Court struck down, the new law applies only to commercial Web sites.

Reed had temporarily blocked enforcement of the law in November. In a hearing before Reed last week, the Justice Department argued that the law would act as a "brown paper wrapper" protecting children from pornographic material.

The government also maintained that requiring Web sites to install checkpoint areas in front of pornographic material would be easy and inexpensive and would not hurt their businesses.

The ACLU argued that the law, signed by President Clinton in October, violates the First Amendment's free speech guarantee and could be used to unfairly prosecute gays and lesbians, AIDS activists or doctors distributing gynecological information.

The ACLU also says checkpoints could be costly and would deter people from visiting affected Web sites, putting some out of business.



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Law Without a Human Face

Listening to Professor Arthur Miller's banter with the "Civil Action" lawyers this weekend was another reminder of how dehumanizing the law can be. Just as the women plaintiffs' story about their children dying as a consequence of corporate irresponsibility never saw the light of day in court, their story was once again relegated to back stage as Miller and the boys discussed the merits of bifurcation, trifurcation, and obfuscation.

At law school, we are trained to think of problems in terms of abstract doctrines, devoid of human content. We learn a faceless law. In the arena where legal realism competes with efficiency and where we expose the fallacy of the public-private distinction, the individual somehow gets lost in the shuffle. Cases aren't about people, they're about concepts. Sure, your kid may have been poisoned by industrial chemicals and died a horrible death, but we have gathered here today to talk about the finer points of hydrogeology.

There are, naturally, very good reasons for this. For the legal system to be practical, the infinite diversity of life has to be channeled into a finite list of concepts and principles. Furthermore, the courtroom is not a pulpit for the downtrodden and unfortunate to share their tragic experiences with their fellow citizens and plead for relief for life's pains. Our adversarial system is about letting the parties' legal representatives argue and bicker in an attempt to hammer out the legally relevant truth, to which a court will apply sterile justice. If the legal truth coincides with the relatively irrelevant descriptive truth, all the better; though the most important thing is that the parties' lawyer had his or her day in court.

Because law school prepares us to enter a world wherein the individual voice means diddley-squat, the danger is that as people we will become as sterile as the system we serve. Perhaps Professor Miller, who at the conference showed that he has all the common touch of Marie Antoinette, may be forgiven because he is primarily an educator, or because he is a specialist in the highly inhuman realm of legal procedure.

But the Miller parable is nonetheless salient. If becoming part of the system means letting the system become part of us, we'll have paid a very, very high price for this acquired profession.

—Ben Lehrer

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"Congress shall make no law...abridging the freedom of speech, or of the press;..."

—First Amendment, U.S. Constitution

• Letters •

SPIN Calls for LIPP Overhaul

On behalf of the Student Public Interest Network ("SPIN"), we are writing to support the allocation of additional funds to student financial aid and outline our concerns and suggestions about the precise allocation of that funding. As students committed to public interest employment and likely participants in the Low Income Protection Plan ("LIPP") after our graduation, we have a particularly strong interest in reinvigorating Harvard's loan forgiveness program.

LIPP mainly serves our law school by allowing students an unencumbered choice of careers after graduation. Debt burdens of law students rise every year, and while this rise has been met by many private sector employers, it has not been accounted for by most public sector employers. The average debt burden of Harvard Law School graduates in the class of 1997 was \$82,000. Public interest salaries generally remain at less than half of that figure. LIPP allows students to choose their careers based on their interests and desires rather than their financial situation.

But LIPP does more than allow choice of careers after graduation; it also acts as a valuable recruiting tool. Potential students are savvy and factor the financial aid package that the various law schools offer into their decisions. Further, minorities and women disproportionately utilize LIPP relative to their presence at the law school. Improving LIPP will therefore not only give our students more choice in their future careers, but will also help draw high-quality students, particularly women and minorities, to Harvard.

SPIN began reviewing LIPP early this fall. We happily discovered that Harvard Law School's LIPP was a pioneering innovation, the first loan forgiveness program in the country. We then contacted other schools, including Yale, Stanford, New York University, and Columbia, and found, unfortunately, that our once proud and leading loan forgiveness program had lost ground over the past decade. Our chief competitor schools now offer significant programs that compare favorably to LIPP by several criteria. We note some of those criteria below. We assert that Harvard Law School should infuse LIPP with substantial additional funding and regain its place as the preeminent law school with the strongest law school loan forgiveness program in the United States.

We acknowledge that reforming LIPP is not an easy task, nor are the best methods readily apparent. Indeed, some graduates fare well under the program. For example, individuals who have exclusively need-based borrowing and have low salaries are well covered by our loan forgiveness program. However, after canvassing our membership and meeting with two members of the Committee on Financial Aid, we recommend the following improvements:

1. *Eliminate the distinction between loans borrowed for student need and loans borrowed in replacement of parental contributions.*

The current treatment of loans borrowed to replace imputed parental contributions discourages choosing public interest careers. Under LIPP, participants make a certain

contribution to their loan payments, determined by their salary, and LIPP pays the remainder. However, LIPP distinguishes between certain types of loans. Student need loans are paid back over a ten-year period. In contrast, parental-replacement loans are currently paid through loans from the law school that are forgiven, after a three year delay, over the last seven years of a ten-year participation in LIPP. If a LIPP participant leaves LIPP after 5 years, that participant must repay five-sevenths of the parental loan payments made by LIPP. This distinction therefore penalizes individuals who work in low-paying jobs for less than ten years. Data show that the average LIPP participant stays in the program for five years, eliminating some portion of the LIPP program for most participants. Finally, because many students cannot know how long they will work in public interest positions, many choose not to do so at all due to this distinction in the treatment of loans. One of LIPP's central purposes is to allow graduates choice of employment; the current distinction undermines that goal.

Moreover, no other leading law school's loan program makes such a distinction.

2. *Address the difficult situation faced by LIPP participants earning above \$40,000.*

The current tiered structure of LIPP accelerates student contribution to loan payments too rapidly. That is, once LIPP participants reach a salary level between \$40,000 and \$49,500, monthly contributions rise sharply in comparison to their salary. Graduates earning \$39,000 a year, before taxes, pay \$250/month toward their loans. By the time such participants reach a salary of \$49,500, their monthly contribution has soared to \$775/month. This situation creates an incentive for LIPP participants to avoid raises so as to avoid losing more money than they gained through a corresponding increase in tax liability and decrease in LIPP assistance. We recommend the following changes to ease the burden on this type of LIPP participant:

A. Reducing the percentage of increased income computed to reach the student contribution.

The current level is 60 percent; we advocate a reduction to 40 percent.

B. Adopting a plan wherein graduates' imputed incomes for the purposes of LIPP are reduced by \$1000 for each year they remain in the program.

For instance, five-year LIPP participants earning \$45,000 would be computed as if they earned \$40,000. This structure would also help reduce the burden on graduates by reducing the salary figure that computes their expected monthly loan contribution.

We note that most graduates who choose to work for the federal government, work in private firms in small cities, direct non-profits, or remain in LIPP for a long time stand to benefit from these reforms.

3. *Address the "bumping out" phenomenon that many LIPP participants face.*

The current \$49,500 cap

on salaries eligible for LIPP is too low for LIPP participants who are deeply indebted. Associates at law firms earn upwards of \$90,000 in their first year. This salary enables them to finance their debt. But for those students who, after working for a few years, suddenly "bump out" of LIPP, the transition from LIPP eligibility to LIPP ineligibility can be severe. We recommend the following proposals that would reduce the problem:

A. Eliminate the cap or increase it to meet the level of federal government lawyers.

By comparison, Yale Law School's COAP and Columbia Law School's loan forgiveness program have no cap. New York University Law School's program is indexed to the salary level of federal government employees.

B. Increase the annual income increase allowed by LIPP.

The current increase is \$1000 a year. Therefore, graduates remain LIPP eligible five years after graduation if they earn under \$55,000 (the base \$50,000 plus \$1,000 for each year out). This annual increase could be adjusted to more accurately reflect general rises in salary over time. The current figure encourages LIPP participants to forego raises, clearly an inefficiency to be avoided.

Importantly, most LIPP participants who "bump out" of the program do so by small margins due to a raise or promotion.

4. *Increase the parental leave provisions from three to six months.*

Because LIPP is designed to allow choice in post-graduation employment, concerns about raising children should be considered. Many students who might otherwise choose a public interest career do not do so because they fear that after a few years, when they might want to start a family, they will be unable to stop working long enough to nurture their newborn children. Raising children remains an expensive undertaking. LIPP should not discourage this important stage in our graduates' lives. We suspect that an increase from a three-month to a six-month parental leave would not be an expensive alteration in LIPP, but would allay many student concerns.

Because we believe that the administration and students should work together to strengthen LIPP, SPIN has sent a delegation to Baker House to volunteer our time to help raise some of the additional funds required to reach these much-needed reforms. The individuals we met with at Baker House indicated that they would be willing to raise funds for LIPP given your direction to do so.

We are requesting a meeting with you to discuss further our proposals and participate in the decision-making process.

We students committed to a career in the broadly-defined public interest appreciate your timely response.

Ayn Ducao '01, Campus Issues Committee Chair
Jonathan Freimann '01, Conservative/Libertarian Committee Chair
Neal Higgins '01, Social Committee Chair
Gene Koo '01, Member
Nicholas Walsh '00, Chair
Student Public Interest Network

January 14, 1999

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PERSPECTIVE

By Alan M. Dershowitz

Is A Perjurer Presiding Over the Senate Trial?

As the Senate "trial" of President Clinton begins, the public will get to see Chief Justice William Rehnquist presiding over the proceedings. He will make rulings about perjury, obstruction of justice, and other points of law. Although these rulings are subject to being reversed by a majority of the Senate, it is likely that Senators will defer to the expertise of the Chief Justice, who will sit before them as the embodiment of the law, draped in a black robe with gold stripes.

Several of the Senators will be gritting their teeth, however, because they believe that Chief Justice William Rehnquist may have committed perjury before them when he testified at his own confirmation hearing for Chief Justice of the United States in 1986. He swore that a smoking gun memorandum he wrote, while he was a law clerk for Supreme Court Justice Robert Jackson, reflected the views of the late justice rather than his own. This distinction was important, since the segregationist views expressed in the damning memorandum might well have disqualified Rehnquist from promotion to Chief Justice.

The Rehnquist memorandum used the first person in declaring that "I think *Plessy versus Ferguson* was right and should be re-affirmed," but Rehnquist claimed that "I" really meant "he." The memo was written in 1952, when Rehnquist was a clerk to Justice Robert Jackson and the Supreme Court was beginning to evaluate *Brown v. Board of Education*. *Plessy* stood for the proposition that racial segregation in schools was constitutionally acceptable, and, more broadly, that a state-supported segregated way of life was legally permissible. Rehnquist claimed that he had written the memo at Jackson's request, and that it represented Jackson's views.

This claim was countered by Elsie Douglas, Jackson's longtime secretary, who called Rehnquist's attribution of the views to Jackson "a smear of a great man....Justice Jackson did not ask law clerks to express his views. He expressed his own, and they expressed theirs." During the confirmation hearings, moreover, several senators quoted from numerous other memos prepared for Justice Jackson wherein Rehnquist expressed what were

clearly his own viewpoints in similar fashion to the statements at issue in the *Plessy* memo. For example, in a memo about the Rosenberg case, Rehnquist wrote:

In my opinion, if they are going to have a death sentence for any crime, the acts of these [petitioners]...are fitting candidates ... It is too bad that drawing and quartering has been abolished.

That was surely the opinion and language of Rehnquist, not Jackson! Indeed Justice Jackson voted to hear arguments in favor of a stay of the Rosenberg's execution, but a majority of the justices denied the stay without oral argument.

Conservative biographer Phillip Kurland, in his biography of Justice Jackson, disputed that Jackson himself — who was America's chief prosecutor at the Nuremberg trials — ever held segregationist views. A later memo written by Rehnquist, also to Jackson, expanded on Rehnquist's views concerning race. "It is about time the Court faced the fact that the white people in the South don't like the colored people." Donald Cronson, a co-clerk, who agreed the memo was prepared at the behest of Justice Jackson to reflect a pro-*Plessy* view, confirmed that Rehnquist regularly defended *Plessy*'s segregationist philosophy at luncheon meetings with other clerks. In addition, classmates of Rehnquist at law school attest to the fact that he harbored segregationist views while at Stanford.

Other facts about Rehnquist underscore the contentions that he may have



lied when he attributed the segregationist views he expressed in the memo to his boss. During the same confirmation process, evidence was introduced of a racist restrictive covenant in a deed to Rehnquist's property, and several senators were concerned about accounts that Rehnquist bullied minority voters at Arizona polls when he was a young Republican activist.

The totality of the evidence led many observers, including several senators, to conclude that it was far more likely that the Rehnquist memorandum reflected the long-standing segregationist views of Rehnquist, rather than the more egalitarian views of Justice Jackson — and that Rehnquist had resorted to "the dead man did it" defense. His claim also sounds like the now familiar "It depends on what the meaning of the word 'is' — or in this case 'I' — is." This all led *The New York Times* to question Rehnquist's truthfulness:

A chief justice can be less than inspiring or less than an ardent civil libertarian, but he cannot be less than a champion of truth.

Ultimately, Rehnquist was confirmed with more than one third of the senators voting against him, several because they thought he had been untruthful in his testimony. If a two-thirds vote — the vote required to remove the President — were required, Rehnquist would have lost. It will be interesting to observe the dynamic between Rehnquist and those senators who believe he may have been guilty of one of the same crimes for which the President is being tried.



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RECORD HOROSCOPES

ARIES

(March 21-April 19)

Be ready to change plans at a moment's notice. Scenario features discovery, aura of sensuality, stirring of creative juices. You find yourself drawn to the lime green and puke yellow of Liz Dole's suits, purchased from K-Mart's Kathie Lee Gifford collection.

TAURUS

(April 20-May 20)

Attention revolves around home, security, music, family relationships. Basically, your life is like an episode of "Eight is Enough" on PAX. Quit playing Backgammon online and start frequenting the chat rooms. You never know what you're gonna get!

GEMINI

(May 21-June 20)

Leo moon encourages quick action, so emphasize versatility and knowledge previously withheld. 1Ls who have not yet done so, transfer into Rosenberg's Federal Litigation elective immediately. You don't know what a ninny you are until someone else writes "puke" all over your carefully crafted core theory memos [but it's not your fault, it's Martha Minow's, that crit!].

CANCER

(June 21-July 22)

You'll have success in commerce, industry, and animal husbandry. If you meet and beat a deadline, you could fall madly in love. Who knows, if you exhibit your daring and beauteous strong calves by getting naked in the snow, it might be reciprocal!!

LEO

(July 23-Aug. 22)

Overdue recognition finally comes your way, and it's not just because you forgot to zip your fly. People in other lands pepper you with questions. Then you realize they only want to know how your first week of criminal law with Dersh was.

VIRGO

(Aug. 23-Sept. 22)

Spotlight on cooperative efforts, temporary dispute concerning guacamole recipe. Discretion necessary. Your life may not be an episode of "Friends," but you don't have to scream about it to all your co-workers, Mr. Chandler Bing Jr.

LIBRA

(Sept. 23-Oct. 22)

Wishes will be fulfilled in sensational manner. Enter the "Why KeyCite Rocks My World" essay contest, and you'll never have to worry about loans again. Look out Sheldon the Wonder Cowboy!

SCORPIO

(Oct. 23-Nov. 21)

Diversify, turn on Scorpio charm, emphasize personality. Some people will be overwhelmed and become staunch allies. Then again, they're all LL.M.s, and people who only require six credits to graduate don't count.

SAGITTARIUS

(Nov. 22-Dec. 21)

Repair watch, get locks and keys in order; it's excellent cycle for fixing things. Why don't you start with Cristina Lewis's vibrator and do something nice for others for a change? Relatedly, avoid the Hark on 50% entree day.

CAPRICORN

(Dec. 22-Jan. 19)

Hey good lookin', you are allowing too many people to take you for granted. Protect yourself from human scavengers. Like all of us, human scavengers gravitate toward you, you know, because you are soooooo fiiiiine.

AQUARIUS

(Jan. 20-Feb. 18)

Brighten surroundings, give attention to modern painters, throw away all your Russian literature. As a 1L, you'll need that happy glow in a couple weeks, when one small piece o' mail from the Registrar will tarnish your sheen, sending you to Student Mental Health Services.

PISCES

(Feb. 19-March 20)

People who attempt to fool you will be in for a rude awakening. Spies involved. Play cards close to vest. Someone desperately wants to know your next move. Protect privacy like Veronica protects that precious "Frasier"/"E.R." sandwich time slot.

Her Indie World

By Suzanne Carter '00
RECORD Columnist

NOTHING'S SHOCKING ON DiFRANCO'S BLAND LATEST

Ani DiFranco
Up Up Up Up Up Up
Righteous Babe 1999

Shock waves shook Ani DiFranco's loyal fan base last year when it was announced that DiFranco wed her longtime techie boyfriend, known to her fans as "Jam Master Goat." Here was an unconventional, unabashed feminist seemingly endorsing the oldest of social institutions.

But DiFranco, one of the great innovators of the contemporary music scene, is a wealth of contradictions. She managed to meld two music forms as disparate as punk and folk at a time when both genres were considered irrelevant. Her left-wing politics pervade every one of her dozen albums, but DiFranco herself is quite the capitalist, having turned her independent Righteous Babe Records label into a huge multimillion dollar enterprise, where DiFranco her-

self earns twice as much per album sold as the typical major-label artist. "Apparently I have it all over Hootie," DiFranco has joked when questioned about her profiteering.

With these contradictions in mind, then, it shouldn't be surprising that *Up Up Up Up Up Up* is such an uneven album. What it is is disappointing; it seems DiFranco may be continuing the downward slide that began with last year's sub-par *Little Plastic Castle*.

Not that *Up...* doesn't have its moments. The superb "Angry Anymore," the album's best track, is a conciliatory note addressed to DiFranco's parents. It features the same resigned wisdom that has garnered DiFranco accolades as a lyricist: "she taught me how to wage a cold war with quiet charm/but I just want to walk through my life unarmed/to accept and just get by like my father learned to do/but without all the acceptance and getting by that got my father through." Likewise, "Tis of Thee" is

memorable for its collusion of the familiar "My Country 'Tis of Thee" ("God Save the Queen" for all you LL.M.s) melody with lyrics criticizing the justice system ("they put everyone in jail except the Cleavers and the Bradys").

But too often DiFranco seems like a parody of herself, as on the unnecessarily long "Come Away From It" (eight minutes that feel like 28) or the self-indulgent "Angel Food," where she banters with her band, apropos of nothing, in the middle of the song (made more annoying by the piece's chimp-like wailing). Come on, Ani, do you think everything you say is worth being mass-marketed and preserved for posterity?

Up Up Up Up Up Up will likely please DiFranco's core fan base. Ani virgins curious about the hyped folkie, however, would be best served by checking out 1995's masterful *Not a Pretty Girl* or, or better yet, 1997's astounding double live



album, *Living in Clip*.

TV Watch — PBS's "Sessions at West 54th," featuring the increasingly creepy David Byrne as host, is one of the best-kept secrets on the tube, if only for Byrne's interview questions, which read like one of Prof. Nesson's '63 exams (Byrne to P.J. Harvey: "Do you believe two plus two is four?"). This week's full hour with Tori Amos, however, promises to be doubly entertaining. Tune in midnight Saturday evening (Sunday morning, if you prefer) to channel 16 and see for yourself why she's the most vital artist in music today.

Correction — My last column referred to Mary Lou Lord, whose *Got No Shadow* was one of my favorite albums of 1998, as a "trick-ass biatch." Having personally conversed with the sweet Ms. Lord and having never in my life used the expression "trick-ass biatch," even to refer to Linda Tripp, who really is a "trick-ass biatch," I could only conclude that a certain South-Eastern European wannabe homeboy entertainment editor added the phrase in a sorely unsuccessful attempt at humor. This, dear reader, is the price one pays for being edited by someone who sleeps on a Hanson pillowcase.

Incidentally, I was out of town for this last issue's production, but I personally requested our editor-in-chief ensure my column was placed unedited. Said entertainment editor informed me that said editor-in-chief spent winter term making plans for this summer's R.E.O. Speedwagon reunion concert. As Jarvis Cocker would say, help the aged!



Spike

By Margie McWilliams



Cape Dollo

SMOOTH, JELLY BEAN, SMOOTH

By Jake Zimmerman '00

Staff Columnist

Tony Bennett left his heart in San Francisco. Me, I left my electric razor there. Sure, my story is a little less poetic. But that's why Tony makes the big bucks in Vegas, while I have to cough up money for therapy to help cope with the lingering trauma from Rosenberg's Torts class.

So, here I sit, with three days worth of five o'clock shadow, probably looking like some bizarre hybrid of Ronald McDonald and Charles Manson, wishing that I could trade places with my poor, lonely Panasonic "Smooth Operator."

As a side note, I should admit that it's probably just as well that I'm away from the razor for a few days. Truth is, I'm a little intimidated by it. It's one of those fancy-shmancy ones that works in the shower, with shaving cream, and if you push the right buttons it probably sings relaxing Puccini arias as you shave. Between its complex functions and its disturbing name (who the hell calls their razor "Smooth Operator"? I'm really starting to worry. For all I know, some day this razor is going to slice open my face, steal my wallet, and flee to Tahiti with all of my money.

There's no way around it: my razor is lazing around in beautiful, sunny San Francisco, while I'm crouched in front of a computer in a dank Gropius basement.

But at least I have sacred memories of my vacation to console me. For it was just last week that I had an earth-shaking, soul-cleansing spiritual experience. Yes, friends, only a few short days ago I had a personal apotheosis more profound than anything that's happened to me since that fateful day when Mom finally explained to me exactly why the cat enjoyed licking herself so much.

Could I fail to extend the arm of hope to misshapen jelly beans that had once faced the cruel specter of annihilation? Of course not.

Today, as I sit in the RECORD office, deep within the bowels of America's finest architectural wonder, I am a changed man. A week ago, I was just another law student with an axe to grind and a curious fetish for emus. But now, my spirit soars with the speed of a professor running from students who have questions about their exams. Why this newfound vitality and richness in my life? All because of one stirring day that will forever alter my being. And what, you ask breathlessly, happened on this glorious day?

Well, I took the Jelly Belly factory tour.

That's right, in a little industrial park not far from Berkeley, California (a city which is currently home to five HLS exchange students who are writing their third-year papers about "Jamaican hemp law"), stands the headquarters of the

Herman Goelitz candy company. "Herman Goelitz" is a name that makes you imagine a war criminal who later became an apprentice to Walter Gropius, but in fact that factory is the point of origin for many of the ubiquitous little chewy candies that we all consume daily in an effort to relieve our oral fixations. (Okay, maybe that's just me.)

Imagine, if you will, the rapture in my eyes, as I saw jelly beans go from the primordial jelly soup through the various phases of their childhood, culminating finally in shiny, beeswax-covered maturity. As I popped one in my mouth, it was as though I was completing the circle of life in a single burst of pure fruity goodness.

The cynical among you may scoff. You may say that the very existence of a Jelly Belly tour suggests that Americans really do have far too much leisure time on their hands. But until you have gazed upon the wonder that is jelly bean manufacture, I urge you not to judge. Go to the East Bay. Go for yourselves, and see the mysteri-



ous sight of a middle-aged woman whose *only* job appears to be sorting through tray after tray of jelly beans, looking carefully for any that cannot live up to rigid quality standards.

And, oh, how I ached for those rejected jelly beans, as

they were tossed in the garbage can of candy history. To come so far, only to be denied the blessed sacrament of corporate approval; to me, it seemed like a metaphor for that idiot who just got kicked out of school for falsifying his transcript.

But don't be too forlorn, dear readers. For, you see, even these tragically under-achieving jelly bean wannabes were given a new hope. In the forgiving land of Jelly Belly, there is redemption for everyone. And thus, at the end of the tour, you are given an opportunity to buy that rarest of treats: a two-pound bag filled with deformed jelly beans.

Should I have refused the chance to purify what was tarnished? Could I fail to extend the arm of hope to misshapen jelly beans that had once faced the cruel specter of annihilation? Of course not. And so, I boarded the airplane with a happy heart and the knowledge that I had made a difference. For my bags contained the most wondrous sight that I can ever hope to see: a full four pounds of mutant candy.

Unfortunately, my bags did not contain an electric razor.



Fenno was sick of hearing the talk about it. All week, it had been the buzz around campus. Well, at any rate, it had been the buzz among the three nerds with pocket protectors who actually read the *Adviser* religiously.

Fenno, of course, had not read the *Adviser* since 1972, and even then it had only been because she wanted to crash one of the Roscoe Pound society's wild drug-crazed orgies. (Fenno sighed briefly at the memory, wishing once again for the days of the sexual revolution.)

But Fenno didn't need to read the *Adviser* to know what was going on. There was scandal in the air, and Fenno could smell it. More to the point, there was *anonymous* scandal in the air. That was Fenno's specialty, and it probably explained why everyone kept nagging her about it.

As Fenno sat in the HarkBox, trying desperately to just concentrate on a nice, relaxing impeachment hearing, yet another classmate came up, gave her a nudge, and asked if she knew the name everyone was looking for. "Come on, Fenno, you must know," he whined. "I just want to make sure his rights were protected. Really. That's all I care about."

Fenno clenched her teeth and muttered through tight lips a short, terse "buzz off," and the student walked off dejectedly. She was so preoccupied that it was a full 20 seconds before she looked up and noticed the telltale oil droplets on the carpet. Fenno slammed her fist on the table in frustration as she realized that she had just given the shaft to the primary inhabitant of her night-time dreams—Dan Fridman himself.

It was the last straw. It was too much to bear. Fenno could handle kidnapping by David Rosenberg, libidinous leers from

Bob Clark, and even bad acid from Charlie Nesson. But the one thing she could *never* abide was the knowledge that there was some juicy piece of secret gossip that she wasn't privy to. Something would have to be done.

Fenno *had* to find out who the moron was that got kicked out of law school for falsifying a transcript.

She needed the information, and she needed it with an urgency that few would ever suspect of her. Rarely did Fenno go to much trouble over anything. Mostly, it was easy enough for her to sit back and toss a few potshots at easy targets like Fast Artie Miller. Fenno allowed herself a quick smirk at the image of his pompous, weasel-like face as he smugly told the Woburn victims that "their children would live on in the classroom."

"It would be so easy," thought Fenno ruefully, "to just forget about this and skewer Fast Artie for another 300 words. It would be just like the good old days." Fenno shook her head regretfully, because she knew it was not to be. Fenno had a job to do. And while it would be a stretch to say that Fenno took pride in her work, Fenno knew that a community was counting on her.

Fenno knew what she had to do. To know your quarry, you have to get into his shoes. Fenno needed to find someone who had traveled the same road. Fenno knew of only one person at Harvard Law School who had been *that* stupid before.

Finding him wouldn't be easy. No one seemed to have seen or heard from him all year. Three years had passed since last he was at Harvard Law School. Three years had passed since last Fenno laid eyes on him. But Fenno had been around for decades. Students, professors, and administrators: they might come, and they might go. But Fenno would still be there. Watching. Listening. Waiting.

Fenno stood up, zipped up her coat, and popped a quick Zantac. She knew her goal, because she had no choice.

Fenno would have to find Ron Kasner.

Next week: will Fenno find the mysterious Fallen Hero? And will he hold the key to the secret she's looking for?

Quote of the Week

"Nobody in his right mind would leave a twenty-dollar bill near Jan Schlichtmann"

— Attorney Jerome Facher '51, commenting on an unrealistic scene in the movie version of "A Civil Action"

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BOOK REVIEW

By Ben Lehrer '99

Welcome to the Thought Police State

The Shadow University" by Alan Charles Kors and Harvey A. Silverglate '67 is a provocative and chilling account of political correctness run amok across America's campuses. The authors focus on harassment policies, which they call "speech codes," to paint a picture of progressive McCarthyism that has turned universities into "the enemy of free society."

Kors and Silverglate make the case that speech codes have no place at public and private universities through a combination of horror stories told about faculty and student victims of these policies and a basic lesson in free speech and academic freedom jurisprudence. The authors approach the latter from a libertarian perspective — or in Catherine MacKinnon's words, "First Amendment fundamentalism." In their view, not only are these codes unconstitutional and out of place at institutions of higher learning that are ostensibly committed to open debate and freedom of conscience, but their selective application to "politically incorrect" viewpoints — particularly conservative Christians — represents a dangerous double standard. As they point out, once the mechanisms of repression are in place, all it takes is a change in the prevailing wind to turn the inquisitors of today into tomorrow's sacrificial lambs.

According to the authors, speech codes are premised on the ideological underpinnings of Herbert Marcuse, a Marxist political and social philosopher who gained prominence in the 1960s New Left student movement. In Marcuse's view, the

The Shadow University
By Charles Kors and
Harvey A. Silverglate
The Free Press, 1998
415 pp., \$27.50

"marketplace of ideas" does not occur in a vacuum but against a background of social and political intolerance inevitable in a class society. Thus, the marketplace is rigged — the views of "the repressive status quo" will always prevail. Marcuse's solution is to withdraw toleration of speech and assembly from the oppressors in order to break their stranglehold over people's minds.

Speech codes translate Marcuse to the university context. The codes generally state that their goal is to provide a level playing field in which all students may study and learn in an atmosphere untainted by oppression and prejudice. In order to do so, the codes prohibit speech that stigmatizes those that they define as members of under-empowered groups — generally women, ethnic and racial minorities, and gays and lesbians, although some widen their scope to attack ageism, ableism, lookism and a dizzying array of other -isms.

The codes prohibit a wide array of speech and actions that denigrate these groups or create a "hostile educational environment." As a rule, the codes are vague, reliant on the subjective perception of the hearer (rather than the intent of the speaker), and violators are subject to relatively opaque disciplinary proceedings.

The authors do not criticize the goal of the codes. Instead, they point out that the Marcusean means are not only inappropriate to achieving their self-proclaimed ends, they are patently counterproductive.

The codes, together with their accompanying "sensitivity training" and army of school administrators on the prowl for any signs of the suspect -isms, assign group identities to students and segregate them into the "weak" (needing protection) and the "strong" (requiring strict supervision). By assigning group identities and then according them special protection, the universities patronizingly assume that members of minority groups are so damaged by discrimination that they cannot speak for themselves. Furthermore, by assuming that there is such a thing as "the woman's viewpoint," "the gay/lesbian viewpoint," the politically correct orthodoxy denies diversity within minority communities.

To Kors and Silverglate, the universities are doing a tremendous disservice to their students. By defining in advance a person's group identity, they impede the individual's ability to define his or her own interests and develop his or her own personhood. By splintering the student body into groups based on biology or sexual orientation, they defeat the ultimate purpose of diversity — to enhance the total experience for all students by creating an integrated community where people of different backgrounds and experiences freely exchange ideas. Indeed, promoting racial, ethnic, gender, and sexual separation ultimately reinforces traditional stereotypes.

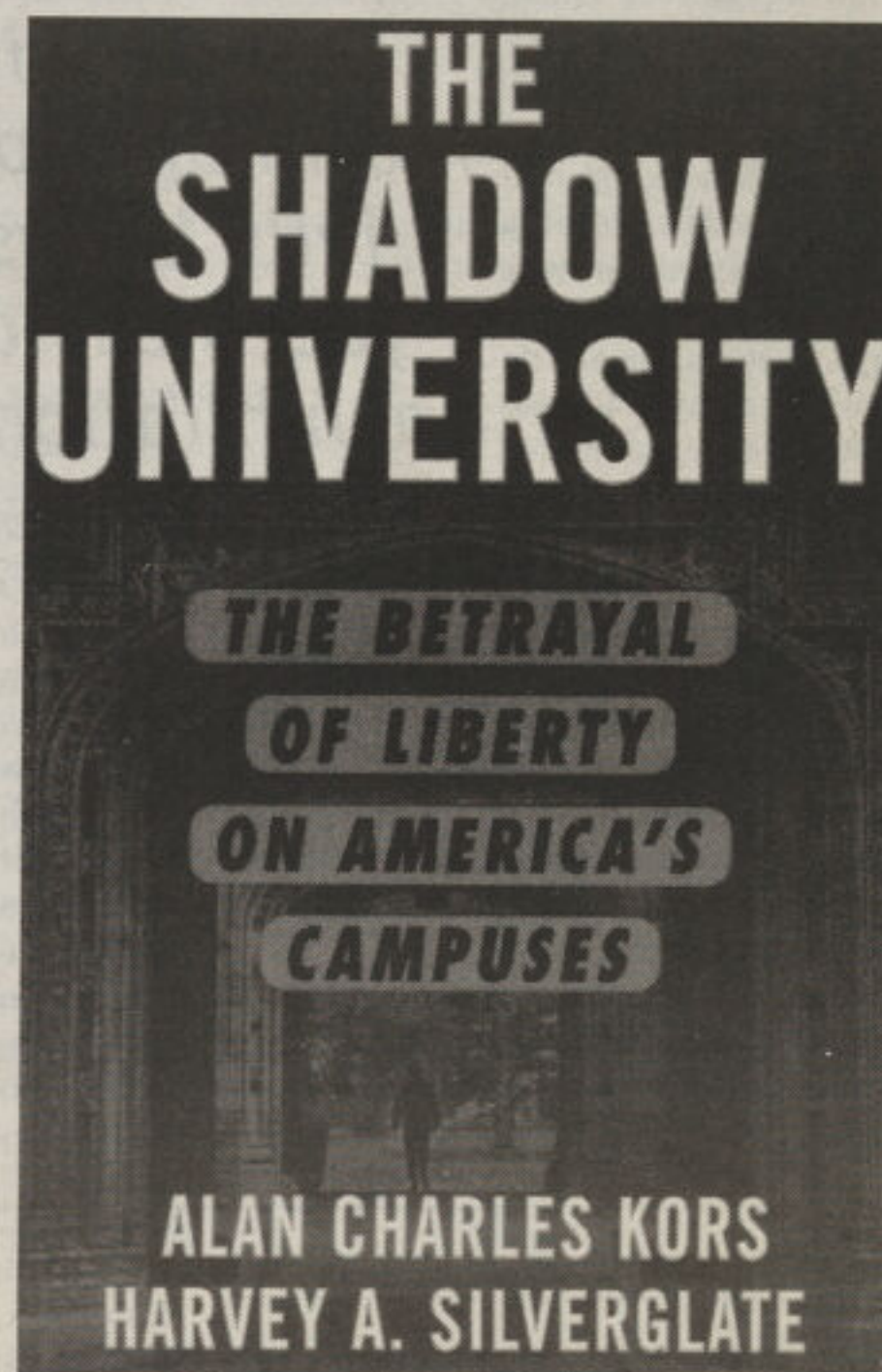
The authors agree that issues of personal identity touch raw nerves in America, and that racial tension, gender-based oppression and homophobia are real and disturbing phenomena. But the issues not only cannot be resolved by censorship; they cannot be properly addressed. Progress in bridging interpersonal differences is best served, in their view, by open dialogue rather than thought control.

Unfortunately, thought control still appears to be the norm. "The Shadow University" contains a number of chilling tales of university behavior more reminiscent of Stalinist Russia than of a country professedly committed to free expression and academic freedom. The book details a number of incidents in which students and faculty were railroaded through opaque disciplinary procedures where traditional due process norms were conspicuously absent. In many cases, the victims of these witch hunts were subsequently bailed out by courts, who reprimanded the universities for outrageous violations of constitutional and common-law norms.

The book also describes how harassment policies are selectively applied only to benefit "favored" viewpoints; religious conservatives, white males and other members of the "oppressive majority" are regularly subjected to the kind of personal, moral and spiritual abuse that, if directed at a member of a "protected minority," would result in suspension or expulsion. For instance, a conservative residential advisor in a dormitory at Carnegie Mellon University was fired for refusing as a matter of conscience to wear a pink triangle during "mandatory gay and lesbian sensitivity training." At the same school, a poster depicting Roman Catholic Cardinal John O'Connor with the epithets "public health menace" and "know your scumbags" was deemed permissible.

The authors reserve their greatest criti-

cism for university administrations for allowing this "assault on liberty" to take place. In their view, administrators are "spineless" and "self-serving" participants in a devil's bargain to sacrifice academic freedom in the name of campus peace. Haunted by memories of student radicalism that led to campus shut-downs and undesirable national media attention, deans across the country have sought to co-opt campus activists, banking on the fact that "Republicans, moderates, evangelicals, assimilationist blacks or Hispanics and devout Catholics don't oc-



HLS Students Rally Against Death Penalty

Continued from DP, p. 1

by one vote.

According to Cellucci spokeswoman Ilene Hoffer, the Governor plans to make the death penalty measure among his first initiatives in the new legislative session, which began in January.

Although opponents of capital punishment seem to have gained some ground in the legislature since last term's vote, student activists face a number of obstacles in getting involved in this issue.

"The thing that is tough is that students are generally transitory and politically disempowered," said Michelle Drake '01. "The death penalty is a legislative issue and because it is so controversial, most political candidates are already nailed down. The vote has been close historically and will be close again, and so the real challenge is to use whatever moral force we might have to persuade the few representative who are undecided and whose votes probably will make the difference."

"My sense is that most students at Harvard are nominally against the death penalty but are not mobilized around it," said Drake. "Harvard is filled with people who call themselves liberals but who don't do anything about it."

The mobilization efforts represent a tactical departure for the Death Penalty Project, whose efforts in the past have focused primarily on providing research support for the litigation and lobbying efforts of larger organizations such as the Massachusetts ACLU.

"The death penalty has not been a hot topic on campus," said Holly Handler '99, Director of the Law School's Death Penalty Project. "One of our main goals is to raise awareness about the situation in Massachusetts and get more students involved in activism efforts."

"We have a small group of highly committed students. It's an important goal to

expand that group," said Ehrlich.

These efforts at the Law School mirror those of national organizations now seeking to galvanize the Massachusetts electorate against what Governor Cellucci has called his "mandate" to reinstate capital punishment. Last Sunday, the Campaign to End the Death Penalty (CEDP), an organization dedicated to building a grassroots opposition to the death penalty in the United States, held a statewide summit to organize student leaders at area colleges and universities. On February 6, Amnesty International and the Campaign to End the Death Penalty are co-hosting a rally at the Boston Statehouse to express opposition to the Governor's plans.

Recent years have witnessed an extraordinary resurgence in the political popularity of the death penalty. The United States currently has the highest known death row population in the world: approximately 3,300. In 1997, the United States carried out 74 executions — only China, Saudi Arabia and Iran were known to have executed more prisoners.

"We're the only Western democracy that has the death penalty," noted Drake. "And we're one of a handful of countries who has yet to ratify the International Declaration of the Rights of the Child because we're so concerned about preserving our right to execute juveniles."

The U.S. Supreme Court struck down the country's death penalty laws in the 1972, on the grounds that they were being administered in an "arbitrary and capricious" manner, in violation of the U.S. Constitution. Several states subsequently passed new laws, which the Supreme Court upheld as constitutional in 1976 because they allowed the death penalty to be applied with "guided discretion." Currently, the death penalty is allowed in 38 states, as well as by federal and military law. Massachusetts is one of the few remaining holdouts.

cupy buildings or cause disruptions that will bring the media to campus."

Indeed, speech codes make strange bedfellows. Kors and Silverglate single out HLS's sexual harassment policy and guidelines, promulgated in October 1995. Noting the oddity of the well-known conservative Dean Robert Clark '72 accepting a policy based on the theories of a 1960s' Marxist, they cite a letter to Silverglate defending the policy in which Clark wrote that while he was aware of the concerns about freedom of conscience, it was "a sign of the times" that there is "the need perceived among students that we have to discuss this or be seen as uncaring of their concerns." The authors suggest that this "need" may have been all the more heightened by the administration's concern about preserving campus peace at the commencement of a \$175 million capital campaign. Harvard also comes under fire for having the least transparent disciplinary procedures of any school the authors surveyed.

Kors and Silverglate have produced a very compelling argument against the various sexual and racial harassment policies that have sprung up on campuses all across America. These policies are addressed to serve noble goals, and the underlying Marcusean thesis about speech and power is powerful and worthy of discussion. Unfortunately, an unfettered discussion cannot take place under the existing speech regimes. Until America's universities — Harvard included — understand the folly of trying to force a certain brand of political orthodoxy down people's throats and instead treat them as both individuals and adults, any student or faculty member who challenges this orthodoxy risks official censure, suspension, expulsion, a protracted and expensive legal battle and the demoralizing sense that the lessons of history and justice have failed to penetrate our country's ivory towers.

Rude Awakening

THE PASSIONLESS GAME

By Elizabeth Falk '00

RECORD Columnist

So there I was. The very first of my dreaded judicial clerkship interviews, opportunities dropped into my lap by some fortuitous circumstance. Opportunities that I surely did not deserve, given the fact that I glanced at the secretaries' desk before entering the leather-padded torture chamber and noticed three Harvard students' résumés on her desk. All Law Review. All gunners. One was even a gunner notorious for giving elaborate, passionate speeches in class with waving hands. A gunner with a conscience...even I wouldn't dare make fun of that. If applications were like presidents, mine was the Bill Clinton in a pile of FDRs, Washingtons and Lincolns; pretty slick style, with mighty little substance.

So, this little girl from Hope, Massachusetts, did what any rational, mediocre Harvard student would have done. After all, if you can't dazzle them with brilliance, then at least baffle them with... you get the idea. I researched the judge's opinions for hours, read newspaper articles about his appointment, and tried to think of reasons why this judge should hire me over individuals who spend their law school lives engaged in theoretical legal conversations while I am out at the Mercury Bar, flirting with B.C. guys and getting drunk. All this effort led me to one conclusion: I had a really good chance if the judge had, per chance, a reminiscent collegiate fondness for Tri Deltas.

Needless to say, I was a bit nervous upon entering this esteemed man's private quarters. I sat down and braced myself for the inevitable substantive legal question, the one that would reveal my inability to keep my eyes open in Con Law during the entire Dormant Commerce Clause section. He looked at me, smiled, and said "So, how's Harvard treating you?"

This was not exactly the question I expected. I fumbled around, realizing the importance of a positive outlook, and un-

comfortably (but brilliantly, of course) mumbled; "aah, fine." (Regroup, regroup!)

To which he smiled even wider, and asked "Tell me, what are the people like there? I didn't go to Harvard myself, and I've always wondered about that."

Oh boy, the answers I could give to that question. But wait, this isn't fair! Isn't he supposed to ask me about The Law? After all, this job is as scholarly and Lawesque as it gets. This whole thing is getting a bit too personal, isn't it? Well, it must be best to be pretty even-handed in the answer so he can't discern anything negative in my attitude. "You know, everyone is really smart, and, I guess, I like some people more than others."

"Hmm, I see. And do you find many people engaging?"

Engaging? Does he mean socially? Intimately? Good lord, no! The institution that churns out corporate burnouts? Maybe academically, when people perceive that it serves their purposes. But passionate for the sake of the issues presented? Passionate about friendships? Relationships?

"Well, of course I find people engaging...everyone is so smart."

"Yes. Well, Ms Falk, you certainly seem to participate in quite a few activities...what do you have to say about that?"

Oh god, he's wondering why my grades are as they are. I don't want to appear as if I'm making excuses, after all, who likes a Monday morning quarterback? But, maybe it would help explain them... make me seem like I had a higher purpose to this entire legal education and was way above "the grade game." Which, of course, I'm not, 'cause who is? What is the real purpose of law school anyway? To train lawyers, or to win the approval of professors?

"Yeah, I guess I am pretty busy" (followed by résumé-like description of various activities).

The interview proceeded in much the

same way for 45 minutes. I don't want to make it sound as if I was inarticulate or socially inept. To the contrary, I believe I was quite verbally descriptive. It was obvious that I had made academic connections to all my extra-curricular activities, and knew quite a bit about the judge. I had lots of "right" answers to why I wanted an appellate clerkship, what I wanted to do with my life, etc. Finally, the judge sat forward in his chair and kindly, but abruptly ended my interviewspeak:

"You know Ms Falk," he said, "it's obvious from your résumé that you care quite a bit...that you care about the law, the legal profession, and most importantly, other people. From your résumé, I imagined you were quite a passionate person who has accomplished a great deal with her time, and you have certainly accomplished a great deal. I am very impressed... thank you for coming in to see me today."

It's funny. I know I didn't get that job, but I'm equally sure that it wasn't for the reasons I originally expected would foreclose the opportunity. Looking back, I'm not quite sure who that person was in that office being interviewed. Two years ago, I would have entered that judge's chambers as confident as Cosmo's Fun and Fearless Female, especially able to answer personal viewpoint questions, and totally unafraid to speak my mind. Yet somehow, I had categorized this job interview as Law School Related, as opposed to Real Life Related; the former being an arena in which I consider myself distinctly disadvantaged. There is Liz, and then there is Liz The Law Student. How had they suddenly become two different people?

This place cultures us to be rational. Rationality is, of course, the crux of legal thought. Unfortunately, I realized after



my interview that in law school, rationality has somehow translated itself to mean neutrality. The most powerful arguments are those devoid of passion and emotion, the "soft" disciplines of the human mind. It's easy to be passionate... hard to get As. Anyone can argue on the basis of their emo-

tions, but hardly anyone gets into Harvard Law School. Anyone can write a RECORD column to remind themselves of their passions...but only the truly strong can remain firm in their respect for passion as imperative to one's legal career, especially in a place where passion doesn't earn any brownie points. Only the strong try to be passionate and "legal" at the same time, even in the face of quite obvious evidence that the academic side isn't making the cut. And that strength was never something I thought would slip away.

But it's too easy to try and separate my personae...because to try and connect them would be scary. Liz The Law Student is pretty damn mediocre; what if Liz "the person" is, too? Keep the passion with "the person," deal with The Law Student for another year and a half and then get the hell out of here, when I can bury my transcript and no longer be mediocre, but instead, a "Harvard grad." The passion will return...I'm sure.

Why did it take an appellate judge, who was supposed to be searching for the most "academically challenging" students, to remind me of what I have always been the most proud of? And more important, how did he manage to see that I was losing it before I did?

Yep, I botched the interview. Almost a lot more than the interview. But it's a mistake that will never be repeated.

Falk also wants to send a message to Waving Hands... congrats, I think you got it, and I think you'll be a perfect match.

Celluloid Chronicle

SISTER DEAREST

By Dusan Stojkovic '00

RECORD Columnist

Despite October Films' questionable marketing strategy, the recently released "Hilary and Jackie" does not quite fit the bill as the newest installment in the line of musical art house movies such as "Shine" and "Mr. Holland's Opus" (which felt longer than even one of Joseph Singer's lectures). This film is a bit more than that.

Apart from the fact that the protagonist is a woman, "Hilary and Jackie" differs from prior tales of frustrated musical genius because it delves deeper into the human condition by recanting the "true" story of Jacqueline du Pré (Emily Watson), a renowned British cellist, and her sister Hilary (Rachel Griffiths), a less than successful flutist who actually had been regarded the more talented of the two as a child.

The screenplay was written by Frank Contrell Boyce and is based on a memoir by Hilary and Piers, her brother, who is the only perfunctory character in the film. It is especially apt in its integration of the music that has, to a great extent, defined the du Prés' legacy.

The plot itself is structured in the form of a musical composition: the introduction, exploring the sisters' childhood, leads into the theme, told from Hilary's vantage point, which is followed by Jackie's variation on the theme, which in turn seamlessly transforms into a tragic coda.

Anand Tucker, an experienced television director in the UK, makes a rather strong motion picture debut in this movie; his work in bridging together the various characters is particularly effective. The

leitmotif is a beautifully filmed fantasy sequence in which the pre-adolescent sisters encounter Jackie as an adult.

But notwithstanding the able direction and cinematography, the writing of these sequences is annoyingly new-ageist, and somewhat reminiscent of Boyce's last screenplay, "Welcome to Sarajevo." Those interested in a more thorough treatment of this '90s fad would be better served by renting Weir's "Fearless," or better yet, by reading the original book by Rafael Yglesias.

Boyce also falters in the Hilary theme of the film. Although this part of the movie nicely sets up Watson's fantastic performance in the last third, Jackie as seen by Hilary is a trifle too trifling, plastic and contrived; she amounts to no more than a Jerry Springer segment waiting to happen. Some of the scenes in this portion seem to be taken directly out of another of Boyce's prior works, "Butterfly Kiss."

Griffiths, an acclaimed Australian actress in her own right, does her best in this rather thankless role of a second flute who allows her sister to bum her husband. The supporting cast is composed of a strong ensemble of British television and stage actors. David Morrissey, whose prior film credits include "Waterland" and "Being Human," makes a wiser career choice here by taking on the role of Kiffer, Hilary's husband and Jackie's strength, as it were. As the tie that paradoxically binds the sisters, this part may well have been the trickiest role in the film. Morrissey excels by failing to mess it up.

Ultimately, however, Watson's thespian genius carries and nearly devours the movie. Still not as good as her labor of suprarational love in "Breaking the Waves," Watson's performance in "Hilary and Jackie" breaks new ground. Watson has the amazing ability to absorb the viewer's attention; one eagerly anticipates every twitch of her eye for the divulgence of a new emotional nuance.

The fact that her character dies of mul-



tiple sclerosis should help Watson garner a second Academy Award nomination, but she will not walk away with the statuette at the end of Oscar night: her acting here is a tad too edgy and the role not sufficiently sappy for the Academy's tastes. If subtler

work does not come her way soon, Watson may well be typecast into becoming the Jennifer Jason Leigh of British film. But then again, that would not necessarily amount to a bad thing.



Recycle the RECORD



ALUMNI CORNER

By Charles O. Porter '47

The Philologist Revisited

By Charles O. Porter '47

When federal authorities identified 1962 Harvard graduate Theodore J. Kaczynski as the Unabomber, I immediately thought of another skewed mental marvel, a 1941 Harvard graduate, my classmate, Philip Matterhorn (not his true name).

One of the differences between them is that a military court condemned Phil to death for its equivalent to treason during World War II. Kaczynski has been sentenced to life imprisonment for killing five persons and injuring 29.

Kaczynski sent lethal or maiming mail to victims to advance his anti-technological message. He wrote in his manifesto: "It would be better to dump the whole stinking system and take the consequences."

Kaczynski is a paranoid egomaniac as well as a mathematical genius. Phil demonstrated a brilliant aptitude for mathematics and linguistics. When I knew him he was massively ill informed and uninterested in literature and history.

At Harvard, Phil and I each had one-bedroom suites in I entry of Dunster House. He lived on the third floor and I on the fifth. He lent me classical records. He let me use his automobile so I could attend the funeral of a classmate in Hartford. The car's engine blew up on the way back. Phil knew I was a penniless scholarship student with a term-time job to pay the dining hall bill. Never a reproachful word.

In September of 1940, disagreement grew between us about the cataclysmic question confronting the world: would the Germans humble and ravage Great Britain and the United States as they had done to France and many other nations, and then take over the rest of the world as a Nazi empire? It was a very close call, closer than most people today realize. Meanwhile, an unprepared and undecided United States became increasingly aware of President Franklin Roosevelt's muted intent that we openly ally with Britain before it was too late.

Phil often demonstrated his genius by playing classical music superbly on the grand piano in the Dunster House common room. He never flaunted his mastery of a wide array of esoteric languages but teachers and classmates qualified to judge recognized his linguistic virtuosity. A Phi Beta Kappa member, Phil graduated from Harvard magna cum laude.

One evening in the fall of 1940 he and I went to a party at Wellesley College. I introduced him as a just landed refugee fleeing from Germany who spoke no English. Several of the girls spoke German. The evening was memorable. Phil, witty and charming, thrilled his audience with a vivid but modest account of his escape from Germany and Hitler's SS and Gestapo thugs by the grace of God.

The seeming switch of loyalty pleased me immensely until discussions showed our views about the Nazis remained 180 degrees apart. Phil emphatically favored the Third Reich taking over the world. Far more "efficient," he said. Based on what I read in the New York Times and what genuine refugees told me of the Nazi horrors then afflicting Europeans, I, along with a growing number of other Americans, strenuously opposed Hitler and his Third Reich.

In the summer of 1940, I organized an interventionist organization of Harvard College students with the help of my tutor, sociology professor Talcott Parsons. We called it the Student Defense League, although our purpose was offense.

Harvard had its share of the nation's isolationists. The renewal of the draft had just passed by a one-vote margin in the House of Representatives.

I read one morning in the Harvard Crimson, the student daily newspaper, that members of the Harvard German Club fiercely challenged Phil's enthusiastic pro-Hitler views during a meeting. That evening I stopped by his room to warn him that if he did join the Nazis, as he often said he was going to do, I would inform the German consulate in Boston that he was a U.S. spy.

A few days later I transferred from my 1940-41 senior year at Harvard College to become a first-year student at Harvard Law School. My law school classmates William Bundy '47 and Richard Wyman '47 and I, with the help of Harvard Law School Professor Warren Abner Seavey '04, launched the Committee for Militant Aid to Britain. On December 6, 1940 we held the first public meeting at Emerson Hall in Harvard Yard as the snow fell outside. Speakers from the university faculty called for an immediate alliance with the British to turn back the advancing Axis military forces.

Drafted in July 1941, I eventually became a Second Lieutenant in the Air Corps and was sent to Britain. I had war correspondent status on all three fronts, during the Bulge and until the end of the war. My four battle stars had no purple hearts beside them on my ribbons. I had more than enough near misses and far too many treasured classmates honored by their names on a wall inside Memorial Church.

Before the war ended my duties took me to the Buchenwald concentration camp just after our troops captured that area and while the mass graves were still open. Later I inspected the concentration camp at Dachau before it was cleaned up. These scenes flash back with my initial disgust and horror unabated by the intervening 56 years.

I try to blot these memories out of my mind but it isn't possible. I can never forget what I saw, close up, of the slaughtered victims of Nazi "efficiency." In my heart I can't absolve the perpetrators and their accomplices, including Phil.

In New York in early 1944 I read about Phil in a newspaper as I was about to board a troop ship bound for Britain. He had just been convicted of the military equivalent of treason and sentenced to death by a military court in Colorado.

The U.S. had drafted Phil and sent him to be a prison guard in Colorado where the FBI was supposed to watch him. On February 8, 1944, authorities caught him helping two German prisoners escape by automobile to Mexico. My feelings were mixed.

I marveled at his ingenuity and bravery, however misplaced, to attempt to do what he promised me and other classmates not long before. But Phil did more than try to join the enemy; he was helping them regain their freedom to fight against our country again. And as a second lieutenant for less than a year about to descend to the third level down in the bowels of a troop ship to watch over and "orient" sixty teenage infantrymen just out of basic training, I was angry with Phil. If a Nazi submarine torpedoed our ship, we'd all freeze to death after five minutes in the icy Atlantic Ocean. He'd be warm and out of harm's way.

Phil spent about seven successive years in prison. Did he realize, at last, the enormity of his error of judgment? He had plenty of time in Leavenworth to read and ponder the choice he made to defect to the Nazis. There really were sadists in Nazi uniforms torturing and killing millions of helpless human beings. The Harvard Class of 1941 had 38 classmates killed in World War II, more than any other Harvard Class. Phil and I were both close friends with classmates Philip Gazecki and Wingate Green. Gazecki's body is still entombed in the hold of the Arizona.

Green died piloting a bomber over the Ploesti oil fields.

After finishing my education, I went to San Francisco with my wife and our son who was born while I was in Europe. As clerk for an associate justice of the U.S. Court of Appeals for the Ninth Circuit, I had time to study for the Oregon bar exam and speculate about Phil.

After four plus years of WWII active service, I knew first hand that military justice was necessarily more swift than it was fair, more military than justice. Such "justice" is an inevitable horror of any war. Was Phil really innocent or at least not so guilty as charged?

President Roosevelt commuted his death sentence and his punishment was reduced to ten years in prison. How to find the facts showing possible defenses? There was no money to pay an investigator so I persuaded Phil to cooperate with writer and New Yorker South Pacific war correspondent, E. J. Kahn, Jr., now deceased. In March and April of 1950, the New Yorker published Kahn's article, "The Philologist," in four consecutive installments. Fully investigated and fair, Kahn's account didn't reveal any lapses of the constitutionally protected due process of law. His New Yorker article disclosed that before Pearl Harbor the FBI recorded Phil's telephone calls to and from the German consulate in Boston. The FBI agents heard Phil offer to go to Germany to help Hitler win. He fraternized and conspired with German prisoners of war to help some of them escape. He demonstrated his treasonous allegiance often over many months.

That the New Yorker articles did not in any degree exonerate Phil, as I dared to hope, saddened me. There was nothing in them to justify my filing a lawsuit for Phil's vindication. He knew all along what he was doing. His impressive but flawed mental powers offered no basis for a credible insanity plea. He was guilty of treason. He was a traitor. Hard words. Foul crime. His punishment didn't fit the crime.

Joan Didion's insightful "Madness and

the Unabomber" article, published in the April 23, 1998 issue of the New York Review of Books, discusses the Unabomber's manifesto. She points out that geniuses such as Descartes, Kant, and Einstein were "strange," "solitary," "detached," "insulated," even "spooky."

Phil shared in some measure all those attributes but compensated for them by a courtly manner and often expressing his joy in sallies of humor. He liked to strut around like a caricature of a disciplined, robotic SS officer. He'd stamp his feet, click his heels, and end of course with the stiff forty-five degree Nazi salute which, I mistakenly thought, he hammed up. I didn't believe then that he took Nazi pomposity seriously but after reading Kahn's four New Yorker articles I had no doubt at all.

The only time since September 1940 that I saw Phil was in 1958, 40 years ago, when I sought him out in his skyscraper office in a California city. He was thriving as a vice president of an insurance company, genial, debonair, and healthy as ever. My schedule was too tight and my premonition too daunting to explore whether he had reconsidered his allegiance to Reichsführer Adolf Hitler. I wanted to believe he had. How could an intelligent, decent adult do otherwise?

Phil attended the 25th and 50th Harvard Class of 1941 reunions. So did I, but our paths never crossed. Only recently did I learn his telephone number from the Harvard alumni records office. I was now more curious than fearful. I wanted to have a conversation about when, if ever, he decided that the Nazis were not at all a superior race of human beings but the deservedly despised perpetrators of unspeakable atrocities, particularly their horrifically "efficient" anti-Semitism.

Recently I telephoned and left word for him to call. When he didn't, and I had waited more than week before I called him again, the number had been changed to an unlisted one. I received his signed card acknowledging receipt of my certified third letter containing pointed questions for him but no other reply.

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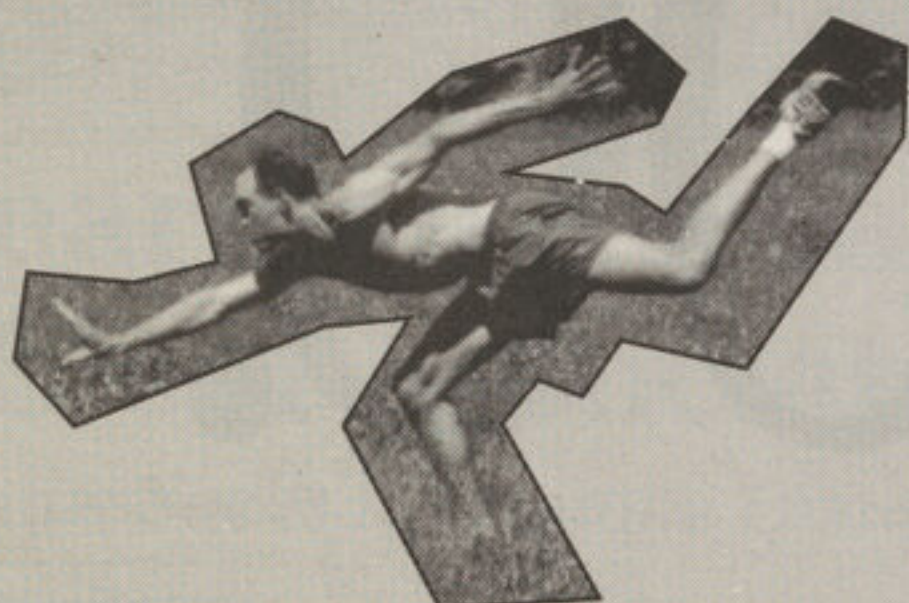
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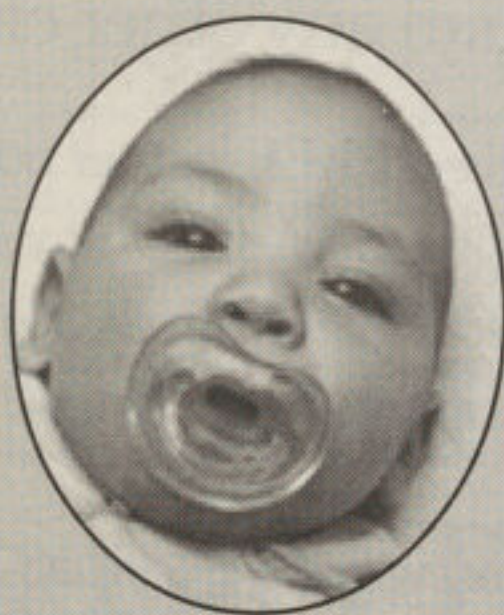
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